AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

OK

8-22-83
Vol. 48 No. 163
Pages 37921-38200

federal register

Monday
August 22, 1983

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aircraft
Federal Aviation Administration

Animal Diseases
Animal and Plant Health Inspection Service

Authority Delegations (Government Agencies)
Transportation Department

Aviation Safety
Federal Aviation Administration

Education
Veterans Administration

Flood Insurance
Federal Emergency Management Agency

Government Procurement
General Services Administration

Health Care
Veterans Administration

Investment Companies
Securities and Exchange Commission

Medicaid
Health Care Financing Administration

Medicare
Health Care Financing Administration

CONTINUED INSIDE

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

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

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

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

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

Selected Subjects

Milk Marketing Orders
Agricultural Marketing Service

Pipeline Safety
Research and Special Programs Administration

Radio
Federal Communications Commission

Reporting and Recordkeeping Requirements
Civil Aeronautics Board
Environmental Protection Agency
Minerals Management Service

Television
Federal Communications Commission

Contents

Federal Register
Vol. 48, No. 163
Monday, August 22, 1983

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
38001 Eastern Ohio-Western Pennsylvania
38002 Iowa

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Soil Conservation Service.

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control
37921 Scabies in sheep; CFR part removed

Arts and Humanities, National Foundation
NOTICES
Meetings:
38117 Expansion Arts Advisory Panel
38117 Local Arts Agencies Test Program Panel
38118 Music Advisory Panel
38118 Theater Advisory Panel
38118 Visual Arts Advisory Panel

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
38091 Acquired Immunodeficiency Syndrome (AIDS): surveillance and associated epidemiologic investigations

Civil Aeronautics Board
RULES
Free and reduced rate transportation:
37928 Recordkeeping and reporting requirements; OMB approval
NOTICES
38060 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
38061 Cloud 9 Helicopter Tours
38061 Spokane-Alberta service case (2 documents)

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service.

Consumer Product Safety Commission
NOTICES
38143 Meetings; Sunshine Act

Defense Department
See also Defense Nuclear Agency.
NOTICES
38067 Agency information collection activities under OMB review

Defense Nuclear Agency
NOTICES
Senior Executive Service:
38067 Performance Review Board; membership

Economic Regulatory Administration
NOTICES
Natural gas; fuel oil displacement certification applications:
38067 American Linen Supply Co. et al.
38069 Dunlop Tire & Rubber Corp. et al.
38068 Moore Business Forms, Inc., et al.
38068 Spaulding Fibre Co., Inc.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
38070 Indiana & Michigan Electric Co.

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Toxic substances:
38178 Records and reports of allegations of significant adverse reactions to health or environment
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
38009 Inorganic arsenic; hearing and extension of time
Air quality standards; national primary and secondary:
38009 Ozone; advance notice
Hazardous waste programs; interim authorizations; State programs:
38010 Georgia; hearing, etc.
NOTICES
38086 Agency information collection activities under OMB review
Air pollution control; control techniques guideline documents; availability, etc.:
38086 Volatile organic liquid storage in floating and fixed roof tanks; volatile organic compounds (VOC) emissions

Federal Aviation Administration
RULES
Airworthiness directives:
37923 Avco Lycoming; correction
37924 Boeing
37923 British Aerospace
37922 Piper
37924 Societe Nationale Industrielle Aerospatiale
37925 Control zones and transition areas
37926 Standard instrument approach procedures
PROPOSED RULES
Aircraft products and parts, certification:
38002 Soloy Conversions, Ltd., et al.
Airworthiness directives:
38005 Boeing

Airworthiness standards:
38004 Transport category airplanes; flight after structural failure; extension of time
38006 Restricted areas
NOTICES
Meetings:
38135 Aeronautics Radio Technical Commission
38135 National Airspace Review Advisory Committee

Federal Communication Commission
RULES
Common carrier services:
37997 License applications; use of random selection or lotteries; stay of effectiveness
37997 Public mobile radio services; one-way paging stations; correction
PROPOSED RULES
Radio stations; table of assignments:
38053 Tennessee, Kentucky, and Indiana; petitions denied
Television broadcasting:
38020 Syndication and financial interest rules

Federal Election Commission
RULES
Contribution and expenditure limitations and prohibitions:
37921 Transfer of funds; collecting agents and joint fundraising; effective date

Federal Emergency Management Agency
PROPOSED RULES
Flood elevation determinations:
38018 Michigan; correction
38018 Minnesota; correction
38019 New York; correction
38019 Ohio; correction
38018 Puerto Rico
NOTICES
38088 Agency information collection activities under OMB review (2 documents)
Disaster and emergency areas:
38088 Illinois

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
38071 Baltimore Gas & Electric Co.
38071 Bonneville Power Administration
38071 Bonney Lake, Wash.
38071, 38072 Connecticut Light & Power Co. (2 documents)
38072 Delmarva Power & Light Co.
38072 Dow Chemical Co.
38072 Equitable Gas Co.
38084 Kentucky Utilities Co.
38084 Michigan Wisconsin Pipe Line Co. et al.
38085 Montana-Dakota Utilities Co.
38085 Northwest Pipeline Corp.
38086 Pacific Power & Light Co.
38073 Hydroelectric applications
Natural Gas Policy Act:
38192, 38197 Jurisdictional agency determinations (2 documents)

Federal Highway Administration
NOTICES
38135 Historic bridges; final nationwide evaluation and approval for National Register of Historic Places inclusion

Federal Maritime Commission
NOTICES
38088, 38089 Agreements filed, etc. (2 documents)

Federal Mine Safety and Health Review Commission
NOTICES
38143 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Applications, etc.:
38089 Citizens Bancorp et al.
38092 Fleet Financial Group, Inc.; correction
38092 Wes-Tenn Bancorp., Inc., et al.
Bank holding companies; proposed de novo nonbank activities:
38089 Barclays Bank PLC et al.
38090 First Chicago Corp.
38143 Meetings; Sunshine Act (2 documents)

Fiscal Service
NOTICES
38141 Privacy Act; systems of records; correction

Food and Drug Administration
NOTICES
Human drugs:
38093 Gantrisin Cream, Koro-Sulf Cream, and Westhiazole Vaginal Jelly; sulfonamide preparations for vaginal use; followup notice and hearing opportunity

General Services Administration
RULES
Procurement (GSA):
37997 Construction progress payments; withholding funds

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration.

Health Care Financing Administration
PROPOSED RULES
Medicaid:
38011 Early and periodic screening, diagnosis, and treatment program
Medicare:
38146 Hospice care

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau.

International Trade Administration
NOTICES
Scientific articles; duty free entry:
38061 National Radio Astronomy Observatory

38062 New York University Medical Center et al.
38062 University of North Carolina

International Trade Commission
NOTICES
38143 Meetings; Sunshine Act

Interstate Commerce Commission
PROPOSED RULES
Rail carriers:
38059 Recyclables, cost ratio; 1983 determination; extension of time
NOTICES
Motor carriers:
38103 Finance applications
38104, 38106 Permanent authority applications (2 documents)
38112 Permanent authority applications; restriction removals
38113 Temporary authority applications
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
38102 Carson Truck Lines, Inc., et al.
38112 Mel-Ro Transport, Inc., et al.
38102 U.S. Truck Lines, Inc., et al.
Rail carriers:
38116 Union Pacific Railroad Co.; passenger train operation

Justice Department
See National Institute of Justice; Parole Commission.

Land Management Bureau
NOTICES
Planning criteria areas:
38099 Colorado

Maritime Administration
NOTICES
Applications, etc.:
38140 Delta Steamship Lines, Inc.

Minerals Management Service
RULES
37967 Outer Continental Shelf; geological and geophysical explorations:
Status reports; monthly submission

National Bureau of Standards
NOTICES
National Fire Codes:
38063 Fire safety standards, revision; inquiry
38064 Technical Committee reports; inquiry

National Institute of Justice
NOTICES
Grants, competitive solicitation:
38117 Long-term, potentially violent offenders; improved management

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
38063 Dolphinarium at Flamingo Land Ltd.

National Park Service
NOTICES
Meetings:
38099 Chesapeake & Ohio Canal National Historical Park Commission
38100 San Antonio Missions Advisory Commission
Seismic survey plan of operations; availability, etc.:
38099 Big Thicket National Preserve, Tex.
World heritage properties list:
38100 U.S. nominations, potential and indicative inventory of potential future nominations

National Technical Information Service
NOTICES
38065 Inventions, Government-owned; availability for licensing

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
38118 Carolina Power & Light Co.
38120, 38122 Pennsylvania Power & Light Co. et al. (2 documents)
Meetings:
38123 Reactor Safeguards Advisory Committee
38144 Meetings; Sunshine Act

Parole Commission
NOTICES
38144 Meetings; Sunshine Act

Railroad Retirement Board
NOTICES
38123 Agency information collection activities under OMB review

Reclamation Bureau
NOTICES
Contract negotiations:
38101 Kennewick Irrigation District, Wash.

Research and Special Programs Administration
RULES
Pipeline safety; natural and other gas transportation:
37999 Plastic pipe; installation
37999 Plastic pipe; use to transport carbon monoxide or hydrogen
37999 Service line valve requirements

Securities and Exchange Commission
RULES
Investment companies:
37928 Registration form used by open-end management investment companies; guidelines
NOTICES
38124 Agency information collection activities under OMB review
Hearings, etc.:
38130 Kentucky Power Co.
38132 National Commercial Banking Corp. of Australia Ltd. et al.
National market system securities:
38124 National Association of Securities Dealers, Inc.; instituting proceeding and granting temporary stay; petition by Institutional Networks Corp.

Self-regulatory organizations:
38124 Options Price Reporting Authority; consolidated options last sale reports and quotation information; immediate effectiveness of amendment
Self-regulatory organizations; proposed rule changes:
38131 National Association of Securities Dealers, Inc.
Self-regulatory organizations; unlisted trading privileges:
38134 Pacific Stock Exchange, Inc. (Triton Group, Inc.)

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
38060 Roy East Sub-watershed, Rock Creek Watershed, Idaho
Watershed projects; deauthorization of funds:
38060 Winters Creek Watershed, Nebr.

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, or man-made textiles:
38065 Haiti
38066 Pakistan

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewals, terminations, etc.:
38142 Trade Intergovernmental Policy Advisory Committee

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; Maritime Administration; Research and Special Programs Administration.
RULES
Organization, functions, and authority delegations:
37998 Coast Guard Commandant; convening and approving CG Reserve Policy Board

Treasury Department
See also Fiscal Service.
NOTICES
38141 Agency information collection activities under OMB review
Senior Executive Service:
38141 Performance Review Board; membership

Veterans Administration
RULES
Vocational rehabilitation and education:
37968 Educational benefits; monthly rate increase entitlement charges, etc.
PROPOSED RULES
Medical benefits:
38007 Treatment during rehabilitation

Separate Parts in This Issue

Part II
38146 Department of Health and Human Services, Health Care Financing Administration

Part III
38178 Environmental Protection Agency

Part IV
38192 Department of Energy, Federal Energy Regulatory Administration

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
Proposed Rules:
1036 38001
1079 38002

9 CFR
71 37921
74 37921

11 CFR
102 37921

14 CFR
39 (5 documents) 37922-37924
71 37925
97 37926
223 37928
Proposed Rules:
21 38002
25 38004
39 38005
73 38006

17 CFR
230 37928
239 37928
270 37928
274 37928

30 CFR
251 37967

38 CFR
21 37968
Proposed Rules:
17 38007

40 CFR
717 38178
Proposed Rules:
50 38009
61 38009
271 38010

41 CFR
5-1 37997

42 CFR
Proposed Rules:
400 38146
405 38146
408 38146
409 38146
418 38146
420 38146
421 38146
441 38011
489 38146

44 CFR
Proposed Rules:
67 (5 documents) 38018, 38019

47 CFR
22 (2 documents) 37997
Proposed Rules:
73 (2 documents) 38020, 38053

49 CFR
1 37998
192 (3 documents) 37999
Proposed Rules:
Ch. X 38059

Rules and Regulations

Federal Register
Vol. 48, No. 163
Monday, August 22, 1983

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 Parts 71 and 74

[Docket No. 83-068]

Scabies in Sheep

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations in 9 CFR Part 74, governing the interstate movement and shipment to slaughter of sheep affected with scabies. These regulations are unnecessary because the United States is free of sheep scabies. The document also amends provisions in Part 71 to reflect that Part 74 is removed.

EFFECTIVE DATE: August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. J. R. Pitcher, Staff Veterinarian, Special Diseases Staff, VS, APHIS, USDA, Room 824, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8231.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1982, a document was published in the **Federal Register** at 47 FR 38704 proposing to remove 9 CFR Part 74. The provisions in 9 CFR Part 74 were designed to prevent the interstate spread of scabies in sheep. The proposal to remove the regulations was based on a finding that scabies has been eradicated from sheep in the United States. Comments on this rule were solicited for 60 days. Three comments, all favorable, were received in response to the proposal. The factual situation and the analysis of alternatives which were set forth in the proposal on September 2, 1982, still provide a basis for the amendment removing Part 74 from 9 CFR. Therefore, the proposal to remove Part 74 is adopted.

It should also be noted that one of the commenters pointed out that if Part 74 were removed, corresponding changes should be made in 9 CFR Part 71 to reflect that scabies in sheep has been eradicated from the United States. APHIS agrees with this commenter. Section 71.3 lists certain diseases that are endemic to the United States and certain diseases that are not known to exist in the United States. Prior to the publication of this document, scabies was listed as a disease that was endemic to the United States. Scabies can occur in cattle or sheep. As pointed out by the comment, scabies still occurs in cattle but, as noted above, has been eradicated from sheep. Therefore, the provisions in § 71.3 are amended to reflect this determination.

Executive Order 12291

This final rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action will not have any annual effect on the economy; will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any 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. This is because the United States had its last reported case of sheep scabies in 1970 and was declared free of that disease in 1973. Therefore, there is no reason to retain unnecessary regulations.

Certification Under the Regulatory Flexibility Act

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will have no significant economic impact on any substantial number of small entities.

List of Subjects

9 CFR Part 74

Animal diseases, Animal pests, Quarantine, Sheep, Transportation, Scabies, Mites.

9 CFR Part 71

Animal diseases, Livestock and livestock products, Quarantine, Transportation.

Accordingly, Title 9, Code of Federal Regulations, is amended as follows:

PART 74—[RESERVED]

11. Part 74 is removed and Part 74 is reserved.

PART 71—[AMENDED]

§71.3 [Amended]

2. In Part 71, § 71.3(a) is amended by replacing the word "scabies" with the phrase "scabies in cattle".

3. In Part 71, § 71.3(b) is amended by adding the phrase "scabies in sheep" after the phrase "screwworms and glanders".

(Sec. 4-7, 23 Stat. 32, as amended, secs. 1, 2, and 3, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, 1265, as amended, secs. 3 and 11, 76 Stat. 130, and 132; 21 U.S.C. 111-113, 114a-1, 115, 116, 117, 120, 122, 123-126, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d))

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

K. R. Hook,

Acting Deputy Administrotor, Veterinary Services.

[FR Doc. 83-23010 Filed 8-19-83; 8:45 am]
BILLING CODE 3410-34-M

FEDERAL ELECTION COMMISSION

11 CFR Part 102

[Notice 1983-21]

Transfer of Funds, Collecting Agents; Joint Fundraising

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On June 7, 1983 (48 FR 26296), the Commission published the text of revised regulation 11 CFR 102.6 and new section 102.17, as transmitted to Congress. These regulations govern the application of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), to the transfer of funds between specified committees,

joint fundraising by political committees, and the status of unregistered organizations that collect and transfer contributions on behalf of a connected separate segregated fund (termed "collecting agents"). The Commission announces that these regulations are effective as of August 22, 1983.

EFFECTIVE DATE: August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463 (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: 2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to implement Title 2 United States Code, be transmitted to the Speaker of the House of Representatives and President of the Senate prior to final promulgation. Because these regulations have been before both Houses of Congress for 30 legislative days, the Commission may finally prescribe the regulations in question. The regulations made effective by this notice were transmitted to Congress on June 2, 1983. Thirty legislative days expired in the Senate on July 28, 1983, and in the House of Representatives on August 2, 1983.

Announcement of Effective Date

11 CFR 102.6 and 102.17, as published at 48 FR 26296, are effective as of August 22, 1983.

Dated: August 16, 1983.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 83-22887 Filed 8-19-83; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-CE-39-AD; Amdt. 39-4707]

Airworthiness Directives; Piper PA-31 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 82-27-13, Amendment 39-4534 (48 FR 1034, 1035) as corrected in 48 FR 15458, 15459, applicable to Piper PA-31 series airplanes. This revision incorporates information in Piper Service Letter No. 959, dated June 10, 1983, and Piper Service Bulletin Addendum No. 1 dated June 7, 1983, supplementing Bulletin No. 739, dated March 1, 1982. This Piper service information was published subsequent to issuance of the AD. This action makes the AD consistent with the manufacturer's service information on the same subject.

EFFECTIVE DATE: August 18, 1983.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Aircraft Corporation Service Bulletins No. 739 dated March 1, 1982; Addendum No. 1 to No. 739 dated June 7, 1983; No. 741 dated March 1, 1982; No. 494B dated July 17, 1979; Piper Aircraft Corporation Service Letters No. 958 dated October 25, 1982; No. 764A dated July 17, 1979; and No. 959 dated June 10, 1983, applicable to this AD, may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: W. H. Trammell, ACE-130A, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7781.

SUPPLEMENTARY INFORMATION: To prevent asymmetric flap extension and possible loss of airplane control, the FAA issued AD 82-27-13, Amendment 39-4534 (48 FR 1034, 1035), as corrected in 48 FR 15458, 15459, applicable to certain Piper PA-31 series airplanes, which required repetitive inspections and flap operations limitations.

Since issuance of AD 82-27-13, Piper has advised that an additional flexible drive shaft, P/N 486-590, was installed in approximately the first 400 airplanes. The part number has been added to Part II on page 13 of Service Bulletin 739 by Addendum No. 1.

In addition, Piper has made available Service Letter No. 959, dated June 10, 1983. Part I of this letter describes a change which installs the Calco Flap System in lieu of the Dukes Flap System. Accomplishment of Part I relieves compliance with the requirements of Service Bulletins No. 494B and 739, Service Letter No. 958, and all of paragraph a) of this AD. Part II of Piper Service Letter 959 describes a change which replaces the Dukes 20:1 gear ratio flap transmission with a Calco 40:1 gear ratio transmission. Accomplishment of Part II relieves compliance with paragraphs a)1, a)3 and a)4 of this AD.

Parts I and II of Piper Service Letter No. 959 have been approved by the FAA as an equivalent means of partial or complete compliance as applicable with paragraph a) of this AD.

Accordingly, the FAA is revising AD 82-27-13, Amendment 39-4534, applicable to Piper PA-31 series airplanes. The revised AD incorporates Piper Service Letter No. 959 as an equivalent means of compliance and corrects paragraph e)4 by adding Part Number 486-590.

Since this amendment clarifies a requirement and provides an optional means of compliance at the operator's discretion, it is relieving and clarifying in nature and imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary, and good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 82-27-13, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13), is amended as follows:

(1) Restate paragraph e)4 to read: "Remove flexible drive shaft, Piper P/N 486-590 or 486-597, as applicable, and install flexible drive shaft Piper P/N 486-631."

(2) Add paragraph e)8 to read: "Compliance with Part II of Piper Service Letter No. 959, dated June 10, 1983, is approved as an equivalent means of compliance with paragraphs a)1, a)3 and a)4 of this AD."

(3) Add paragraph e)9 to read: "Compliance with part I of Piper Service Letter No. 959, dated June 10, 1983, is approved as an equivalent method of compliance with paragraph a)1 through a)4 of this AD."

This amendment becomes effective August 18, 1983.

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

Note.—The FAA has determined that this document involves an amendment that is clarifying and relieving and does not impose any additional burden on any person. Therefore (1) It is not a major rule under Executive Order 12291, and (2) it is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. I certify it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because it clarifies and relieves, and because it involves few, if any, small entities.

Issued in Kansas City, Missouri, on August 3, 1983.

James O. Robinson,

Acting Director, Central Region.

[FR Doc. 83-22903 Filed 8-17-83; 11:19 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-ANE-12; Amdt. 39-4676]

Avco Lycoming Model LTS101-600A-2 Gas Turbine Engines; Airworthiness Directives; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In Docket No. 83-ANE-12, Amendment No. 39-4676, appearing on page 33699, Volume 48, No. 143, in the Federal Register of July 25, 1983, the effective date of the amendment was erroneously stated as July 25, 1983. The correct effective date of the amendment is August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Ted Pas, General Aviation Engine Section, ANE-142, Engine Certification Branch, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts. Telephone: (617) 273-7347.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, Amendment 39-4676 published in the **Federal Register** on page 33699, Volume 48, No. 143, July 25, 1983, is hereby amended by correcting the effective date of the amendment shown on page 33699 from July 25, 1983, to August 25, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1345(a), 1421, and 1423); (49 U.S.C. 106(g) revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.89))

Issued in Burlington, Massachusetts, on August 12, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 83-22975 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-NM-18-AD; Amdt. 39-4709]

British Aerospace Aircraft Group Model H.S. 748 Series 2A Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain British Aerospace Aircraft Group Model H.S. 748 airplanes which requires inspection, and replacement as necessary, of fasteners on the wing lower surface. In several cases incorrect fasteners were inadvertently installed when the wing was manufactured. These fasteners may reduce the structural capability of the wing below design limits.

DATES: Effective September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace Aircraft Group H.S. 748 Service Bulletins 57/62 and 57/63 as mandatory. The following conditions are described in these bulletins:

Incorrect fasteners have been found on a number of wing assemblies on the wing bottom surface; (a) at the rib/stringer attachment brackets at rib 224.366 and at stringers 4 and 6 at all ribs on each side of wing access panels W3 to W12 except W10; and (b) at the rib/stringer attachment brackets at rib 16.071 and stringers 9, 10, 11 and 12.

The service bulletins prescribe inspections and replacement of the incorrect fasteners.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection and replacement as necessary of fasteners on the wing lower surface was published in the Federal Register on April 18, 1983 (48 FR 16500). The comment period closed on June 7, 1983.

Interested parties have been afforded an opportunity to participate in the making of this amendment.

No comments were received.

The proposal inadvertently included the H.S. 748 series 1 and 2 airplanes, as well as 2A series airplanes. Only the 2A series is U.S. type certificated. The rule as adopted addresses only the 2A series.

Only one U.S. registered airplane will be affected by this AD, it will take about 64 manhours to accomplish the required actions, and the average labor cost is $35 per manhour. Repair parts are supplied at no cost by the manufacturer. Based on these figures, the cost impact to the sole U.S. operator will be $2,240. For these reasons, the AD is not considered to be a major rule under the criteria of Executive Order 12241. Few small entities within the meaning of the Regulatory Flexibility Act will be affected by this action.

Therefore, since no new information is available that might change the rule, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

British Aerospace Aircraft Group: Applies to all Model H.S. 748 series 2A airplanes certificated in all categories. To prevent wing structural failure accomplish the following, unless already accomplished:

A. For airplanes with wing fuel tanks extending outboard beyond rib 350.366, within the next 1,500 hours or six months time in service, whichever occurs first after the effective date of this AD, inspect the rib/stringer bracket fasteners of the wing bottom surface at rib 224.366 and at stringers 4 and 6 at all ribs on each side of wing access panels W3 to W12 except W10, and perform the actions described in paragraph 2, Accomplishment Instructions, of British Aerospace Aircraft Group H.S. 748 Service Bulletin 57/62 dated June 1980.

B. Within the next 500 hours of 60 days time in service, whichever occurs first after the effective date of this AD, inspect the rib/stringer bracket fasteners of wing bottom surface rib 16.071 and stringers 9, 10, 11, and 12 and perform the actions described in paragraph 2, Accomplishment Instructions, of British Aerospace Aircraft Group H.S. 748 Service Bulletin 57/63 dated June 1980.

C. Alternate means of compliance which provide equivalent level of safety may be

used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

This amendment becomes effective September 19, 1983.

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

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on August 5, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-22977 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-ASW-34; Amdt. 39-4708]

Airworthiness Directives; Boeing Vertol Model 234 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires initial and repetitive inspections and replacement as necessary of aft landing gear spindles on Boeing Vertol Model 234 helicopters. The AD is prompted by reports of a structural fatigue failure and fatigue cracks in landing gear spindles which could result in failure of the spindle assembly and subsequent injury to people on the ground.

DATES: Effective August 25, 1983.

Compliance required within the next 50 hours after the effective date of this AD, unless already accomplished, for all aft landing gear spindles with more than 1000 hours' time in service.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone number (516) 791-6221.

SUPPLEMENTARY INFORMATION: There have been reports of a fatigue failure and fatigue cracks in the spindle shaft that inserts into the swivel housing of aft landing gear on six Boeing Vertol Model 234 helicopters. If the spindle assembly, wheels and tires were to separate from the helicopter in flight, people on the ground could be injured. Total time in service for the cracked spindles varied from 1529 hours to 2632 hours. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the aft landing gear spindles for cracks and replacement as necessary on Boeing Vertol Model 234 helicopters. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

Boeing Vertol Company: Applies to Boeing Vertol Model 234 helicopters certificated in all categories equipped with aft landing gear spindles, P/N 114L2322. Compliance is required as indicated unless already accomplished.

To detect cracks and to prevent possible fatigue failure of landing gear spindles, accomplish the following: Inspect the aft left and right main landing gear spindles for cracks, within the next 50 hours' time in service from the effective date of this AD, or before the accumulation of 1000 hours' time in service on the aft landing gear spindles, whichever comes later.

(a) Conduct the inspection specified in Boeing Vertol Service Bulletin No. 234-32-1004 dated April 22, 1983, paragraphs 3.B(1) through 3.B(8) or FAA approved equivalent.

(b) After the initial inspection of paragraph (a), repeat the landing gear spindle inspections of paragraph (a) at intervals not to exceed 200 hours' additional time in service from the last inspection.

(c) Remove from service spindles having cracks and replace with a serviceable part prior to further flight.

(d) An equivalent method of compliance with this AD may be used when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times specified in this AD.

This amendment becomes effective August 25, 1983.

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

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

Issued in Fort Worth, Texas, on August 4, 1983.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 83-22998 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-ASW-12; Amdt. 39-4698]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Models AS350 and AS355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD)

which requires repetitive inspection and repair or replacement, as necessary, on the main rotor mast of Aerospatiale Model AS350 and AS355 series helicopters. This amendment is needed because the FAA has determined that the repetitive inspection interval specified in the existing AD is inadequate to detect all main rotor mast cracks to prevent mast failure and subsequent loss of control of the helicopter. This amendment decreases the previous inspection interval. It establishes a retirement time for masts used on the Model AS355 helicopters.

DATE: Effective August 26, 1983.

Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

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

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, FAA Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, telephone number 513.38.30 or R. T. Weaver, Helicopter Policy and Procedures Staff, ASW-111, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2548.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-4599 (48 FR 14351), AD 83-07-05, which currently requires inspection of the main rotor mast for cracks and repair or replacement, as necessary, on Aerospatiale (SNIAS) Models AS350 and AS355 series helicopters. After issuing Amendment 39-4599, the FAA has determined, based on service experience, that the repetitive inspection intervals required by the AD are inadequate and that a service life is needed for masts installed on Model AS355 helicopters. Since Amendment 39-4599 was issued, an additional extensive mast flange crack was found on a Model AS355 helicopter; it occurred 170 hours from the last inspection and at a lesser number of total flight hours than the original extensive mast flange crack. Therefore, the FAA is amending Amendment 39-4599 by reducing the repetitive inspection interval specified in the AD from 300 hours to 50 hours on Aerospatiale (SNIAS) Models AS350 and AS355 series helicopters and by limiting the service life of main rotor masts installed on Model AS355 helicopters to 450 hours' total time in service. Reference to the latest Aerospatiale Service Bulletins concerning the main rotor mast is also added to Amendment 39-4599. The telex service documents and service bulletins are similar except more explicit instructions are furnished by the service bulletins.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4599 (48 FR 1435), AD 83-07-05 by revising paragraphs d, e, f, and h to read as follows:

* * * * *

d. (3) Replace any cracked masts.

e. For AS355 aircraft, remove from service any main rotor mast which has accumulated 450 hours' or more total time in service.

f. Rework corroded masts in accordance with Aerospatiale Service Bulletin 05.08 or 05.13, dated April 19, 1983, or FAA approved equivalent. Replace any masts corroded beyond the allowed rework.

h. Repeat the inspections required in paragraph d within the next 10 hours' time in service after the effective date of this amended AD or before 50 hours' time in service from the last inspection, whichever occurs later; thereafter, repeat the inspections required in paragraph d at intervals not to exceed 50 hours' time in service from the last inspection.

This amendment become effective August 26, 1983.

This amendment amends Amendment 39-4599 (48 FR 14351), AD 83-07-05.

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

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

Issued in Fort Worth, Texas, on July 22, 1983.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 83-22978 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-ANE-16]

Montpelier, Vermont; Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the description of the Montpelier, Vermont Control Zone and 700-foot Transition Area. This revision is necessary due to the relocation of the Montpelier Very High Frequency Omni Range Station. (VOR) and the establishment of the Very High Frequency Omni Range Station Runway (VOR RWY) 35 Original and Nondirectional Beacon Runway (NDB RWY) 35 Original Standard Instrument Approach Procedures (SIAP) to Edward F. Knapp State Airport, Montpelier, Vermont.

EFFECTIVE DATE: September 29, 1983.

FOR FURTHER INFORMATION CONTACT: David Hurley, Operations Procedures and Airspace Branch, ANE-536, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, (617) 273-7285.

SUPPLEMENTARY INFORMATION: On pages 22933 and 22934 of the **Federal Register** dated May 23, 1983, the FAA published a Notice of Proposed Rulemaking which would amend § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Montpelier, Vermont. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 71.171 and § 71.181 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 feet 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. 44°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.

(Sec. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69))

Note.—The FAA has determined that this regulation 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) and 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 August 10, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 83-22672 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 97

[Docket No. 23726; Amdt. No. 1249]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly

to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending Part 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPS identified as follows:

* * * *Effective September 29, 1983*

Scottsdale, AZ—Scottsdale Muni, VOR-A, Amdt. 4
San Jose, CA—San Jose Muni, VOR RWY 12L/R, Amdt. 17
Douglas, GA—Douglas Muni, VOR-A, Amdt. 4
DeKalb, IL—DeKalb Muni, VOR/DME RWY 27, Amdt. 2
Dixon, IL—Dixon Muni-Charles R. Walgreen Field, VOR-A, Amdt. 7
Indianapolis, IN—Mt. Comfort, VOR-A, Amdt. 1, Cancelled
Indianapolis, IN—Mt. Comfort, VOR RWY 34, Amdt. Orig.
Albia, IA—Albia Muni, VOR/DME-A, Amdt. 2
Fort Madison, IA—Fort Madison Muni, VOR/DME-A, Amdt. 4
Grand Haven, MI—Grand Haven Memi Airpark, VOR-A, Amdt. 11
Holland, MI—Park Township, VOR-C, Amdt. 6
Linden, MI—Prices, VOR-A, Amdt. 3
Petersburg, MI—Lada, VOR-A, Amdt. 4
Lake Winnebago, MO—Lake Winnebago Muni, VOR/DME-A, Amdt. Orig.
Stockton, MO—Stockton Muni, VOR/DME-A, Amdt. Orig.
Jackson, OH—James A. Rhodes, VOR/DME-A, Amdt. 1
Newark, OH—Newark-Heath, VOR-A, Amdt. 8
Woodsfield, OH—Monroe County, VOR/DME RWY 25, Amdt. 3
Xenia, OH—Greene County, VOR-A, Amdt. Orig.
Youngstown, OH—Youngstown Elser Metro, VOR-C, Amdt. 1
Youngstown, OH—Youngstown Muni, VOR RWY 18, Amdt. 15
Tulsa, OK—Richard Lloyd Jones Jr., VOR/DME-A, Amdt. 3
Clearfield, PA—Clearfield-Lawrence, VOR RWY 30, Amdt. 3
Philipsburg, PA—Mid-State, VOR RWY 24, Amdt. 14
Selinsgrove, PA—Penn Valley, VOR-A, Amdt. 3
State College, PA—University Park, VOR-B Amdt. 8
Pelion, SC—Corporate, VOR-A, Amdt. Orig.
Sioux Falls, SD—Joe Foss Field, VOR or TACAN RWY 15, Amdt. 14
Sioux Falls, SD—Joe Foss Field, VOR/DME or TACAN RWY 33, Amdt. 5
Dublin, VA—New River Valley, VOR-A, Amdt. 7
Dublin, VA—New River Valley, VOR/DME RWY 6, Amdt. 6
Galax-Hillsville, VA—Twin County, VOR/DME RWY 18, Amdt. 2
Wausau, WI—Wausau Muni, VOR-A, Amdt. 14
Wausau, WI—Wausau Muni, VOR/DME RWY 12, Amdt. Orig

* * * *Effective September 1, 1983*

Vandalia, IL—Vandalia Muni, VOR RWY 18, Amdt. 10

* * * *Effective August 4, 1983*

Crookston, MN—Crookston Muni-Kirkwood Fld, VOR RWY 31, Amdt. 3

2. By amending Part 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPS identified as follows:

* * * *Effective September 29, 1983*

San Jose, CA—San Jose Muni, LOC/DME RWY 30L, Amdt. 5
Douglas, GA—Douglas Muni, LOC RWY 4, Amdt. Orig.
Sterling Rockfalls, IL—Whiteside Co Arpt Jos H. Bittorf Fld, LOC BC RWY 7, Amdt. 3
Newark, OH—Newark-Heath, SDF RWY 9, Amdt. 1
Roanoke, VA—Roanoke Muni/Woodrum LDA RWY 5, Amdt. 4

3. By amending Part 97.27 NDB and NDB/DME SIAPS identified as follows:

* * * *Effective September 29, 1983*

Scottsdale, AZ—Scottsdale Muni, NDB-B, Amdt. 1
San Jose CA—San Jose Muni, NDB/DME RWY 30L, Amdt. Orig.
Douglas, GA—Douglas Muni, NDB RWY 4, Amdt. Orig.
Chicago, IL—Chicago-O'Hare Intl, NDB RWY 9R, Amdt. 13
Chicago, IL—Chicago-O'Hare Intl, NDB RWY 27R, Amdt. 19
Chicago, IL—Chicago-O'Hare Intl, NDB RWY 32L, Amdt. 18
Chicago, IL—Chicago-O'Hare Intl, NDB RWY 32R, Amdt. 18
DeKalb, IL—DeKalb Muni, NDB RWY 27, Amdt. 6
Kewanee, IL—Kewanee Muni, NDB RWY 1, Amdt. 4
Kewanee, IL—Kewanee Muni, NDB RWY 9, Amdt. 4
Sterling Rockfalls, IL—Whiteside Co Arpt Jos H. Bittorf Fld, NDB RWY 7, Amdt. 3
Bloomfield, IA—Bloomfield Muni, NDB RWY 36, Amdt. 2
Charles City, IA—Charles City Muni, NDB RWY 12, Amdt. 8
Charles City, IA—Charles City Muni, NDB RWY 30, Amdt. Orig.
Clarion, IA—Clarion Muni, NDB RWY 14, Amdt. 2
Fairfield, IA—Fairfield Muni, NDB RWY 35, Amdt. 5
Mt. Pleasant, IA—Mt. Pleasant Muni, NDB RWY 33, Amdt. 4
Sioux Center, IA—Sioux Center Muni, NDB RWY 17, Amdt. 2
Holland, MI—Park Township, NDB RWY 5, Amdt. 1
Holland, MI—Park Township, NDB RWY 23, Amdt. 1
Marysville, OH—Union County, NDB RWY 27, Amdt. 4
Newark, OH—Newark-Heath, NDB RWY 9, Amdt. 2
Versailles, OH—Darke County, NDB RWY 9, Amdt. 5
Youngstown, OH—Youngstown Muni, NDB RWY 32, Amdt. 16
Philipsburg, PA—Mid-State, NDB RWY 16, Amdt. 5
Sioux Falls, SD—Joe Foss Field, NDB RWY 3, Amdt. 21
Blacksburg, VA—VPI, NDB RWY 8, Amdt. 5
Galax-Hillsville, VA—Twin County, NDB-A, Amdt. 4

* * * *Effective August 9, 1983*

Sylacauga, AL—Lee Merkle Fld, NDB-A, Amdt. 2

* * * *Effective August 4, 1983*

Crookston, MN—Crookston Muni-Kirkwood Fld, NDB RWY 13, Amdt. 5

4. By amending Part 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPS identified as follows:

* * * *Effective September 29, 1983*

San Jose, CA—San Jose Muni, ILS RWY 12R, Amdt. 2
San Jose, CA—San Jose Muni, ILS RWY 30L, Amdt. 15
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 9R, Amdt. 11
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 27R, Amdt. 21
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 32L, Amdt. 21
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 32R, Amdt. 18
Sterling Rockfalls, IL—Whiteside Co Arpt Jos H. Bittorf Fld, ILS RWY 25, Amdt. 8
Boston, MA—General Edward Lawrence Logan Intl, ILS/DME RWY 15R, Amdt. 7
Youngstown, OH—Youngstown Muni, ILS RWY 14, Amdt. 2

Youngstown, OH—Youngstown Muni, ILS RWY 32, Amdt. 21
Philipsburg, PA—Mid-State, ILS RWY 16, Amdt. 5
State College, PA—University Park, ILS RWY 24, Amdt. 4
Sioux Falls, SD—Joe Foss Field, ILS RWY 3, Amdt. 23
Sioux Falls, SD—Joe Foss Field, ILS RWY 21, Amdt. 4
Dublin, VA—New River Valley, ILS RWY 6, Amdt. 3
Charleston, WV—Kanawha, ILS RWY 5, Amdt. Orig.

The FAA published an Amendment in Docket No. 23719, Amdt. No. 1248 to Part 97 of the Federal Aviation Regulations (Vol 48 FR No. 153 Page 35877; dated August 8, 1983, under Section 97.29 effective September 15, 1983, which is hereby amended as follows:

Bethel, AK—Bethel, ILS/DME RWY 18, Amdt. 2

Change effective date to September 29, 1983.

5. By amending Part 97.31 RADAR SIAPS identified as follows:

** * * Effective September 29, 1983*

Chicago, IL—Chicago-O'Hare Intl, RADAR-1, Amdt. 36
Youngstown, OH—Youngstown Muni, RADAR-1, Amdt. 8
Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 5

6. By amending Part 97.33 RNAV SIAPS identified as follows:

** * * Effective September 29, 1983*

South Lake Tahoe, CA—Lake Tahoe, RNAV RWY 18, Amdt. Orig., Cancelled
Clarion, IA—Clarion Muni, RNAV RWY 14, Amdt. Orig.
Fort Madison, IA—Fort Madison Muni, RNAV RWY 16, Amdt. 2
Fort Madison, IA—Fort Madison Muni, RNAV RWY 34, Amdt. 2
Grand Haven, MI—Grand Haven Meml Airpark, RNAV RWY 27, Amdt. 1
Newark, OH—Newark-Heath, RNAV RWY 9, Amdt. 1, Cancelled
State College, PA—University Park, RNVA RWY 6, Amdt. 5
Wausau, WI—Wausau Muni, RNAV RWY 12, Amdt. Orig., Cancelled

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

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. For the same reason, the FAA certifies that this amendment 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 August 19, 1983.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 83-22842 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 223

Free and Reduced Rate Transportation; Approval of Extension of Reporting Requirements by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Notice of approval of extension of reporting requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the reporting requirements and the application requirement contained in Part 223 of the Board's Economic Regulations governing free and reduced rate transportation. The Office of Management and Budget approved the extension of these requirements through August 31, 1986, under OMB No. 3024-0002. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES:

Effective: August 1, 1983.

Adopted: August 16, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 223

Air rates and fares, Government employees, Handicapped, Reporting and recordkeeping requirements, Travel agents.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-23007 Filed 8-19-83; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270 and 274

[Release Nos. 33-6479; IC-13436 (S7-957)]

Registration Form Used by Open-End Management Investment Companies; Guidelines

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form and rules; publication of guidelines.

SUMMARY: The Commission is adopting: (1) Form N-1A, a new form for registration of certain open-end management investment companies ("mutual funds") under the Investment Company Act of 1940 and the Securities Act of 1933; and (2) certain related rules and rule amendments. The Commission is also publishing staff guidelines for the preparation of Form N-1A. Form N-1A will establish a two-part format for disclosure to prospective investors consisting of: (1) a relatively short prospectus that can be used to satisfy the prospectus delivery requirements of the Securities Act of 1933; and (2) a Statement of Additional Information that will be available to prospective investors upon request and without charge. The Commission is adopting the foregoing in order to shorten and simplify the prospectus provided to investors while providing more extensive information to those who desire it. The existing mutual fund registration form will continue to be available to such funds during a transition period of approximately one year.

DATE: The new and amended rules will be effective September 21, 1983. The Form and Guidelines will be available for mutual funds registering September 21, 1983 and for mutual funds filing post-effective amendments September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Jane A. Kanter, Special Counsel (202) 272-2115 or Gregory K. Todd, Esq. (202) 272-7317, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today adopting:

(1) Form N-1A, a registration form that will replace Form N-1 [17 CFR 239.15, 274.11] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the "1933 Act") and the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] (the "1940 Act") for use by open-end management investment companies other than

registered separate accounts of insurance companies. Registration Form N-1A is divided into three parts: (i) Part A contains instructions for the simplified prospectus, which consists of information that meets the requirements of section 10(a) of the 1933 Act [15 U.S.C. 77j(a)]; (ii) Part B contains instructions for the "Statement of Additional Information," which provides additional and more detailed information and will be available to prospective investors upon request; and (iii) Part C contains instructions as to other information that is required to be in the registration statement. The text of Form N-1A is published herewith as Appendix A to this release;

(2) New rules 495 [17 CFR 230.495], 496 [17 CFR 230.496] and 497 [17 CFR 230.497] which are added to Regulation C under the 1933 Act [17 CFR 230.400 *et seq.*]. Rule 495 (formerly rule 404A, as proposed) is adapted from current rule 404 [17 CFR 230.404], rule 496 (formerly rule 427A, as proposed) is adapted from current rule 427 [17 CFR 230.427] and rule 497 is adapted from current rule 424 [17 CFR 230.424] under the 1933 Act. Rule 495 concerns the preparation of registration statements on Form N-1A. Rule 496 concerns the contents of a prospectus or Statement of Additional Information used more than 9 months after the effective date of a registration statement filed on Form N-1A. Rule 497 concerns the filing of copies of the prospectus as well as the Statement of Additional Information.

(3) Amendments to rules 18f-1 [17 CFR 270.18f-1], 22d-1 [17 CFR 270.22d-1], 22d-2 [17 CFR 270.22d-2] and 30d-1 [17 CFR 270.30d-1] under the 1940 Act. Rules 18f-1, 22d-1, and 22d-2 are amended to permit registrants filing on Form N-1A to provide the disclosure required by those rules, at their discretion, in either the prospectus or Statement of Additional Information. Rule 30d-1 is amended to permit a registrant filing on Form N-1A to transmit to shareholders a copy of its currently effective prospectus or Statement of Additional Information, or both, as the equivalent of the annual and semi-annual reports required by the rule, provided those documents contain the information specified in rule 30d-1;

(4) Amendments to rule 485 [17 CFR 270.485] of Regulation C under the 1933 Act. Rule 485 is amended to reflect the new three-part format under Form N-1A; and

(5) New rules 8b-11A [17 CFR 270.8b-11A] and 8b-12A [17 CFR 270.8b-12A] under the 1940 Act. These rules are adapted from current rules 8b-11 and 8b-12 under the 1940 Act. Rule 8b-11A concerns the number of copies of the registration statement filed on Form N-1A that must be filed with the Commission, signature requirments, and requirements for binding the registration statement; and Rule 8b-12A concerns the quality of paper, printing and language requirements for the registration statement filed on Form N-1A. These rules are being added to reflect the new disclosure format.

Concurrent with the adoption of Form N-1A, the Commission is publishing staff guidelines for the preparation of Form N-1A, which are published herewith as Appendix B to this release.

Background and Purpose

On December 21, 1982, the Commission proposed for comment a revised registration form for mutual funds (Form N-1A), as well as certain related rules and staff guidelines. In the proposing release [1] the Commission expressed the belief that, under present requirements, mutual fund prospectuses are not effective disclosure documents for most investors because they are too long and complex. To address this problem without depriving the public of information that may be important to some investors, the Commission proposed a two-part disclosure format under which funds would provide investors with a simplified prospectus and would make available upon request and without charge, a Statement of Additional Information.

The commentators supported this concept, although they suggested changes and sought clarification on certain points. With modifications in response to the comments, the Commission is adopting Form N-1A and certain related rules and rule amendments, and is publishing related staff guidelines.

Form N-1A—An Overview

New Form N-1A establishes a three part registration statement: Part A relates to the simplified prospectus; Part B relates to the Statement of Additional Information; and Part C relates to other information required by the registration statement.

The simplified prospectus called for by Part A is intended to provide a concise presentation of certain information now in Part I of current Form N-1. This simplified prospectus meets the requirements of section 10(a) under the 1933 Act, and, therefore, can be used to satisfy the prospectus delivery requirements of section 5(b)(2) of the 1933 Act [15 U.S.C. 77e(b)(2)]. The Form seeks to achieve the goal of prospectus simplification in several ways. First, many specific items of disclosure that are now required to be in the prospectus under Form N-1 have been transferred to the Statement of Additional Information. Second, with respect to general matters that will be disclosed in the prospectus but amplified in the Statement of Additional Information, the items of Parts A and B attempt to delineate with specificity what information should be in the prospectus and what information should be in the Statement of Additional Information, in order to provide guidance to registrants and their counsel who may be concerned about potential liability for material omissions from the prospectus. The Commission's expectation is that this degree of specificity will encourage registrants to be more concise in describing the fundamental characteristics of the fund than they might be if the items in the form were couched in more general terms. In addition, the instructions emphasize brevity in the presentation of information in the prospectus, giving greater prominence to more significant information, and minimizing technical and legal detail. At the same time, in order to preserve registrants' flexibility, registrants are not for the most part required to present information in any particular order or format, and are generally free to include in the prospectus information in addition to that required by the specific items of the Form.

Part B of Form N-1A, the Statement of Additional Information, consists primarily of information that is currently required in Form N-1. In Part B, registrants would have the opportunity to provide more detailed discussions of matters required to be in the prospectus, as well as discussions of certain matters that are not required to be in the prospectus, but which may be of interest to at least some investors. Registrants are required to disclose on the cover page of the simplified prospectus that the Statement of Additional Information is available free of charge to any potential investor.

Part C of Form N-1A pertains to information that is not required to be in the prospectus, but is required by the registration statement. Such information is similar to that currently required in Part II of Form N-1.

Discussion of Comments Received

In response to the release proposing Form N-1A, the Guidelines and associated rules, the Commission

[1] Investment Company Act Release No. 12927 [48 FR 813 [January 7, 1983]].

received 25 letters of comment.[2] The commentators were overwhelmingly in favor of the Commission's goals of: (i) simplifying the disclosure provided to investors so that fund prospectuses will clearly disclose the fundamental characteristics of the particular investment company in question, and (ii) shortening investment company prospectuses, thereby reducing the costs and burdens imposed by registration under the 1940 Act and the 1933 Act. The commentators generally expressed the view that proposed Form N–1A was a significant step toward accomplishing those goals and urged the Commission to adopt the new Form promptly.[3] A substantial number of helpful specific comments and suggestions were offered in connection with the proposed Form, many of which are reflected in changes made in the Form and rules as adopted, and the Guidelines as they are published in Appendix B to this release. These specific comments, as well as others not directly reflected in the text of the Form, rules and Guidelines are discussed below. The first portion of this discussion will focus on the major issues raised by the commentators. The remainder of the discussion will deal with the specific items of the Form or instructions to the Form about which comments and suggestions were offered. Specific comments relating solely to the Guidelines are discussed in Appendix B to this release.

Incorporation by Reference

The release proposing Form N–1A set forth the Commission's authority to adopt Form N–1A and observed that section 19(a) of the 1933 Act states that no provision of that Act "imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the Commission." The Commission further pointed out that proposed Form N–1A provided detailed guidance as to what information the Commission believed should be in the prospectus in order to assist registrants in acting "in good faith in conformity" with Form N–1A.

Nevertheless, the Commission recognized that some registrants using Form N–1A may be concerned that omitting information from the simplified prospectus could expose them to liability. The Commission requested comments as to whether this concern was a valid one and, if so, how it should be addressed. The tentative view of the Commission was to permit incorporation by reference of the Statement of Additional Information into the prospectus at the fund's discretion, without requiring that the Statement of Additional Information be delivered with the prospectus.

Of the sixteen commentators who responded, thirteen generally supported the concept of incorporation by reference while three commentators specifically disagreed with the Commission's proposal to permit incorporation by reference. Eight commentators concluded that the Commission should permit incorporation by reference, and five took the position that such incorporation should be made mandatory. In light of the comments, the Commission is revising Form N–1A to permit registrants to incorporate the Statement of Additional Information into the prospectus by reference, provided that that fact is disclosed on the cover page of the prospectus.

The Commission has determined that it is not appropriate to require incorporation in the context of the simplified mutual fund prospectus. The prospectus called for by Part A of Form N–1A, standing alone, will meet the standard of section 10(a) of the 1933 Act. That is, the simplified prospectus will contain the information that is "necessary or appropriate in the public interest or for the protection of investors." Requiring additional information that is not physically in the prospectus to be legally part of the prospectus would not be consistent with this concept. Moreover, registrants would not gain any additional protection against liability if incorporation by reference were mandated rather than permitted. In either case, if a mutual fund incorporates the Statement of Additional Information by reference, the Statement would be part of the prospectus as a matter of law.

Synopsis

Form N–1A, as proposed, required a synopsis of the salient features of the offering only if the printed prospectus would be longer than twelve pages. The Commission also expressed the view that under Form N–1A, fund prospectuses would normally not exceed twelve pages and would, accordingly, be brief enough that a synopsis would not be necessary. The Commission requested comments on this issue and on whether estimating the length of the prospectus would involve undue costs or other burdens.

Fourteen commentators made specific comments concerning whether the synopsis requirement would involve undue costs or excessive burdens for registrants. Eight of the commentators suggested that the synopsis requirement should either be eliminated or made optional, at the discretion of the registrant, consistent with the Commission's approach in Item 503 of Regulation S-K under the 1933 Act [17 CFR 229.503].[4] Generally, the commentators argued that the synoposis requirement would merely add another unnecessary layer of information to the information that was condensed in the simpified prospectus. They further asserted that a synopsis would discourage investors from reading the already shortened prospectus. Several of the commentators also requested that if the Commission did not eliminate the synopsis requirement, then the threshold number of pages should be increased to 14, 15, or 16 pages and should not include applications, full financial statements or lists of portfolio securities, if the issuer included such materials in the prospectus.

Six commentators were in favor of a "bright-line" test for determining whether a synopsis was necessary. They generally concluded that the synopsis requirement would not be unnecessarily costly or burdensome to the funds.

The Commission has considered the comments and has determined that the synopsis requirement as proposed should be modified to permit issuers to decide whether or not to provide a synopsis in the prospectus of the salient features of the offering. Although there are advantages to the objective test that was proposed, the commentators have pointed out that registrants may voluntarily include information beyond

---

[2] The commentators can be divided into the six following categories: (i) eight commentators from the securities bar, (ii) eight commentators who are investment advisers and fund managers, (iii) four commentators who represent trade associations, (iv) two commentators who represent investment companies, (v) one commentator from the insurance industry, and (vi) two individual investors. In addition to these commentators, six individual investors wrote the Commission expressing their general support for prospectus simplification in response to an article that appeared in the *San Francisco Examiner* on May 15, 1983.

[3] Representatives of the insurance company industry, especially those of counsel to separate accounts, expressed the view that the concepts embodied in Form N–1A would be beneficial for insurance products. Moreover, they asserted that adoption of the Form N–1A for open-end companies, other than insurance company separate accounts, was prejudicial to the interests of the insurance company industry. Although the Commission is not prepared to include insurance company separate accounts with other open-end management companies on Form N–1A at the present time, the Division of Investment Management is currently completing a proposal for integrated forms providing prospectus simplification for insurance products.

[4] Item 503 requires inclusion of a prospectus summary "where the length or complexity of the prospectus makes such a summary appropriate.

what is required in their prospectuses but that whether or not a synopsis is appropriate in such cases will depend on the nature and manner of presentation of such additional information. The Commission still believes, however, that a prospectus no longer than twelve printed pages would not normally need a synopsis. Prospectuses longer than twelve printed pages should include a synopsis where the length or complexity of the prospectus makes a synopsis appropriate.[5] Since it will be up to the registrant to decide whether to include a synopsis, it follows that the precise content of the synopsis should not be prescribed in the Form. Such a synopsis should, of course, accurately summarize the salient features of the offering.

Omitting the Full Financial Statements and the List of Portfolio Securities From Part A

Under Form N–1A as proposed, the condensed financial information required by Item 3 of Part A was intended to be the only financial information in the prospectus, and the full financial statements of the investment company were to be placed in the Statement of Additional Information. The Commission stated in the proposing release its belief that the condensed financial information that would continue to be in the prospectus was sufficiently comprehensive to satisfy the needs of most mutual fund investors. Nevertheless, the Commission requested specific comments on the appropriateness of omitting from the prospectus full financial statements and, in particular, the schedule of portfolio securities.

In considering the issues raised by the Commission, all of the seven commentators agreed that full financial statements were unnecessary in the prospectus. These commentators generally agreed that condensed financial statements were sufficient for most mutual fund investors' decision-making process, expecially in light of the fact that full financial statements would be available to the investor upon request and at no charge. Two commentators, however, suggested that the placement of the full financial statements should be left to the discretion of the registrant.

Of the five commentators who expressed an opinion on the question whether the list of portfolio securities should be deleted from the prospectus and included only in the Statement of Additional Information, only one commentator opposed the proposal. That commentator stated the belief that many non-professional as well as professional investors are interested in information concerning the portfolio composition of the fund. Two other commentators observed that, if investment companies were frequently asked to send the Statement of Additional Information to investors in order to provide investors with portfolio information, then the elimination of portfolio information from the prospectus would negate the intended benefits of the new disclosure format. The remainder of the commentators on this issue, however, either supported the proposal to move the list from the prospectus to the Statement of Additional Information or argued that its placement should be at the discretion of the issuer.

The Commission has considered the comments received and continues to believe that most mutual fund investors do not need the full financial statements or the list of portfolio securities to make an informed investment decision. Those investors who want this financial information may, or course, acquire it from the issuer by requesting the Statement of Additional Information, and registrants are free to include any information, in the prospectus, including additional financial information, that does not impede understanding of the required information. Consequently, these provisions of Form N–1A are being adopted by the Commission in the same form as they appeared in the proposal.

Form N–1A

The following portion of this release discusses the comments received on the various instructions to and items of the Form and the changes the Commission is making in response thereto. Readers are referred to Investment Company Release No. 12927 for a fuller explanation of the proposed Form.

General Instructions to the Form

The Commission received several comments on the General Instructions to Form N–1A. As proposed, General Instruction E permitted a registrant to incorporate the condensed financial information contained in their annual reports to shareholders into the prospectus if certain conditions in the instruction were met. The instruction, however, did not permit registrants to incorporate the financial statements contained in their annual reports to shareholders into the Statement of Additional Information. As certain commentators noted, General Instruction E to Form N–1 currently permits registrants to incorporate the financial statements contained in their annual reports to shareholders into the prospectus. Six commentators suggested that the language of General Instruction E should be expanded to permit incorporation by reference of the full financial statements contained in the annual report to shareholders into the Statement of Additional Information, if the annual report to shareholders is delivered to the investor simultaneously with Part B. The commentators suggested this revision so that funds might avoid additional typesetting and printing costs. This comment is consistent with the intent of the proposal and the Commission has accordingly revised General Instruction E to permit registrants to incorporate the financial statements in the annual report to shareholders into the Statement of Additional Information.[6]

Another commentator noted that instructions currently found in Form N–1 relating to item numbers, captions, charts, graphs, and sales literature has been omitted from Form N–1A. The Commentator suggested that these instructions should be inserted into Instruction G. Finally, a commentator from the securities bar suggested that the items in Parts A, B, and C of Form N–1A should be numbered consecutively to eliminate confusion. The Commission agrees with these comments and, accordingly, has made appropriate revisions in General Instruction G and the numeration of the items in Form N–1A.

General Instructions for Parts A and B

The General Instructions for Parts A and B of Form N–1A, as proposed, required that appropriate cross-references should be used between the prospectus and the Statement of Additional Information whenever necessary or desirable, to call attention to information included in either document that would be useful to an understanding of a particular matter being discussed in the other document. Two commentators raised the question of whether an issuer *must* provide cross-references in the prospectus to the information in Part B. These commentators argued that the requirement to cross-reference information would make the prospectus very confusing for a typical investor and

[5] Nevertheless, all prospectuses should include a table of contents pursuant to rule 481 of Regulation C under the 1933 Act [17 CFR 230.481]

[6] The Commission is also making a technical amendment to rule 30d–1 under the 1940 Act [17 CFR 270.30d–1] to permit the registrant to use the prospectus or the Statement of Additional Information, or both, to satisfy the registrant's requirement to provide its shareholders with a semi-annual or annual report.

could lead an investor to believe that not all material information concerning the registrant was in the prospectus. Upon reconsideration the Commission has concluded that requiring cross-references is not consistent with the concept of the simplified prospectus and that the requirement that the availability of the Statement of Additional Information be disclosed on the cover page will suffice to make investors aware that they may obtain additional disclosure.

Items of Form N–1A

I. Part A: Prospectus

Item 1—Cover Page

Item 1 of the Form requires that certain information concerning the registrant appear on the cover page of the prospectus. With regard to this item, the Commission received two comments suggesting that Item 1 should be amended to permit logos and other attention-getting devices to be placed on the cover page of the prospectus. One of the commentators also suggested that the cover page and the synopsis, if applicable, should state whether or not the fund charges a sales load. In response to these comments, the Commission notes that Item 1(b) of Form N–1A permits registrants to include on the cover page of the prospectus information other than that required by the item so long as such information does not interfere with an investor's understanding of the information required to be on the cover page. This provision of Item 1 permits registrants to include on the cover page of the prospectus logos or other attention-getting devices. Regarding the recommendation to require sales load information on the cover page of the prospectus, such information is not presently required by Form N–1 and the Commission does not think it appropriate to make such a change at this point.

The Commission is modifying Item 1(a)(iv) to require that the cover page of the prospectus include the date of the current Statement of Additional Information as well as the date of the prospectus. The purpose of this revision is to identify for investors the date of the most current version of the Statement of Additional Information.[7]

Item 3—Condensed Financial Information

Item 3(a), as proposed, was identical to current Item 3 of Form N–1 and required certain financial information to be presented in tabular form on a per share basis for a ten year period or the life of the fund. Two commentators questioned whether the auditor's report pertaining to the required condensed financial information would have to be included in the prospectus, even though such auditor's report was not required by the item. The Commission has considered the comment but does not believe that it is necessary to require inclusion of the auditor's report for the condensed financial information in a simplified mutual fund prospectus. Instead, the Commission believes that registrants should include the auditor's report for the condensed financial information in Part B along with the fund's full financial statements. However, the registrant should disclose in the prospectus if the condensed financials are based on anything other than an unqualified report by the auditors. Therefore, the Commission is adopting this portion of the item with a modification of instruction 5 to this item to clarify this position.

Several commentators also expressed concern that if yield quotation information were provided only in the Statement of Additional Information, such yield information would not be part of the prospectus, unless incorporated by reference. Further, these commentators suggested that if yield quotations were not part of the prospectus, registrants would be unable to include such figures in a rule 482 [17 CFR 230.482] advertisement.[8] In response to these commentators' concerns, the Commission is adding Item 3(c) to Form N–1A, which will require money market funds to include in their prospectuses standardized yield quotations. If the registrant chooses, it may also include in the prospectus an effective yield quotation computed in accordance with the method specified in the instructions to Item 3(c) of the Form. In either case the description of the method of calculating the yield quotations should not be included in the prospectus, but instead should be included in the Statement of Additional Information pursuant to Item 22. Thus the yield quotation would be available for use in a rule 482 advertisement.

Item 4—General Description of the Registrant's Business

Item 4, as proposed, required a concise discussion of the organization and operation of the registrant. To encourage brevity in discussing activities that would not be central to the registrant's operation, Item 4, as proposed, provided that an investment policy or practice that the registrant intended to follow need be identified only if such policy or practice would place no more than five percent of the registrant's net assets at risk. In addition, the proposal stated that so-called "negative policies" prohibiting the registrant from engaging in certain activities or policies not followed by the registrant in the past year need not be disclosed in the prospectus.

The Commission received four comments objecting to the use of a five percent threshold test. Three of these commentators suggested that the threshold should be increased to at least ten percent, and should apply only to initial investments by the fund and not to the effects of changes in the portfolio by market actions. The fourth commentator urged that a subjective test of materiality would more flexibly respond to particular situations than the proposed five percent test. In the Commission's judgment it is appropriate to provide an objective test of the type proposed for relatively insignificant investment policies and that investment policies likely to affect no more than five percent of a fund's assets need only be identified. Recognizing that reasonable people may differ as to the proper threshold, the Commission nevertheless believes that policies that could affect as much as 10 percent of a fund's assets require more disclosure than mere identification. However, to the extent any such policy is not a principal investment policy, it should be given relatively less prominence in the prospectus.

The Commission received four comments concerning the Commission's decision to delete information from the prospectus concerning negative investment policies. All of these commentators supported this approach by the Commission.

With regard to Item 4(a)(i)(B) requiring disclosure of the classification and subclassification of the registrant, two commentators asserted that the item was unnecessary since only open-end management investment companies can use Form N–1A. These commentators argued that in responding to Item 4(a)(i)(B) all that should be necessary for the fund to disclose is whether the registrant is a diversified or non-diversified fund. However, the prospectus provided to investors will not state that the registrant has filed on Form N–1A with the Commission, nor would we expect a typical investor to infer the classification of a registrant

[7] For a fuller discussion of the comments concerning this modification, see the discussion in the text of the release at footnote 13.

[8] A rule 482 advertisement is an omitting prospectus the substance of which must be contained in a full statutory prospectus.

from such a disclosure even if it were made. Consequently, the Commission is of the opinion that registrants should continue to state in the prospectus their classification and subclassification.

Item 5—Management of the Fund

Item 5(a) of the prospectus, as proposed, required a brief description of the responsibilities of the board of directors with respect to the management of the registrant. Three commentators expressed the view that the parenthetical expression in Item 5(a)* could be construed as indirectly establishing a standard of corporate governance. These commentators suggested that the item be revised to eliminate this inference, and proposed language which could be used to make this modification. The Commission did not intend for this provision to imply a standard of conduct for directors, and Item 5(a) has been revised accordingly. Specifically, the Commission has amended Item 5(a) to provide that "(In responding to this item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Registrant's jurisdiction of organization * * *]".

Item 5(b)(iii) of the Form, as proposed, required a description of the investment adviser's compensation, including disclosure of the total dollar amount of the investment adviser's compensation; Item 5(e) required a statement as to the registrant's expenses for the most recent fiscal year as a dollar amount and as a percentage of average net assets. With regard to Item 5(b)(iii), two commentators suggested that disclosure of the total dollar amount of the investment adviser's compensation should be deleted from the prospectus because the amount is always directly related to the amount of aggregate assets of the fund. One of these commentators further asserted that the ratio of the amount of the adviser's compensation to the amount of total assets is of significant importance to investors and should not be "rendered confusing" by the disclosure of the total dollar amount of the adviser's compensation. The other commentator suggested that the inclusion of information on "how advisory fees are calculated in all cases" would be of more use to investors. With regard to Item 5(e), five of the commentators argued that the requirement to disclose the total dollar amount of the fund's expenses is repetitive of the material in the condensed financial statements, and three of the commentators again argued that total dollar figures are confusing in light of the fact that such numbers do not take into account the asset size of the fund. These commentators argued that total dollar figures for the fund's expenses should not be required, and that instead the fund's expenses should be expressed as a percentage of net assets, as already required in Item 3.[16] The Commission agrees with these commentators and, consequently, has revised Items 5(b) and 5(e) to remove the requirement that the registrant disclose the total dollar amount of its expenses and the total dollar amount of its investment adviser's compensation. However, the Commission believes that some disclosure concerning the registrant's expenses and the investment adviser's compensation may be important to investors and potential investors, and, therefore, the requirement of Item 5 for information concerning the ratio of these expenses to the fund's total assets is being retained.

Item 5(f), as proposed, required that, if the registrant engages in certain brokerage allocation practices, a statement to that effect should be included in the prospectus. Three commentators argued that information concerning brokerage allocation practices is not of fundamental importance to investors and should be deleted from the prospectus. One commentator suggested that registrants should not be required to disclose allocation practices unless they involve affiliated persons. However, a fund's brokerage allocation practices can raise a number of issues of importance to investors, including possible conflicts of interest. Therefore, the Commission believes concise prospectus disclosure is appropriate at least where brokerage is allocated to affiliated persons or based on the sale of fund securities by the broker. For these reasons the Commission has determined to retain the disclosure required by Item 5(f) as it was proposed.

Item 5(g), as proposed required that the registrant provide information concerning any affiliated person of the registrant who is, or has been within the last ten years, subject to the provisions of sections 9(a) or 9(b) of the 1940 Act [15 U.S.C. 80a-9], regarding the disqualification of certain persons from acting in certain capacities for investment companies. Nine commentators addressd this item. Four of the commentators recommended that Item 5(g) be either deleted entirely or, alternatively, moved to Part B or Part C of the Form. Another commentator recommended that item should simply be deleted. Three commentators suggested that the information required by this item should be disclosed only where material. The commentators variously advanced the following rationales for their suggestions: (i) since there is presently no specific requirement to disclose this information in Form N-1, there should be no need to include this information in Form N-1A; (ii) as a practical matter it would be difficult for funds to identify all persons who may be subject to disclosure under this item (i.e., a person owning more than five percent of the Registrant's securities but not controlling the fund); (iii) disclosure under this item would place a "stigma" on a person who has received an exemptive order pursuant to section 9(c), even though the purpose of the order is to qualify that person and remove any stigma associated with him; (iv) the disclosure required by Item 5(g) would place undue emphasis on this particular information regarding officers and directors when other information concerning such persons has been omitted from the prospectus; and (v) if a person has received an exemptive order pursuant to section 9(c) of the 1940 Act enabling him to serve the fund the informaion required by this item should not be of fundamental importance to investors. In light of these comments, particularly the latter one, Item 5(g) has been deleted from Form N-1A.

Item 6—Capital Stock and other Securities

Item 6, as proposed, required a brief description of the capital stock and other securities which are being offered by the registrant, the identity of persons controlling the registrant, and certain of the rights and responsibilities of shareholders in the fund.

In considering the various provisions under Item 6, one commentator questioned whether registrants organized as Massachusetts business trusts ("MBTs") would have to make special disclosure under Item 6(a)(iii) solely because their form of organization carries with it contingent liability for shareholders. The Commission has concluded that disclosure in the

* Item 5(a), as proposed, stated:

[In responding to this Item, it is sufficient to state that the directors have overall responsibility, in the absence of special circumstances, for the management of the Registrant * * *].

[16] Three commentators also raised this concern with respect to the requirement in Item 2(c)(i)(C) of the synopsis, as proposed, which required the registrant to disclose the total dollar amount of its expenses in the synopsis. As previously discussed in this release, the requirement to include specific information in the synopsis has been eliminated. *But see* Guide 33 for staff guidance as to the contents of a synopsis.

prospectus of this possibility should not be required where the registrants believe that, because of arrangements designed to protect shareholders against such liability, there is not a material likelihood of loss or expense to investors.

Another commentator suggested that, since voting rights are implied, registrants should not be required to discuss in the prospectus voting rights in response to Item 6(a)(i). Discussion of many of the incidents of being a shareholder may be omitted from the simplified prospectus, but the Commission believes that shareholders' voting rights are of sufficient importance to merit a brief description in the prospectus.

Item 6(g), as proposed, required a brief description in the prospectus of the tax consequences to investors of an investment in the securities being offered. For a registrant intending to qualify for treatment under Subchapter M of the Internal Revenue Code [26 U.S.C. 851 to 860], the item required that certain information should be provided in the fund's prospectus. Two commentators noted that the disclosure suggested in the item is not a correct statement of the tax consequences to investors of a fund qualified under Subchapter M. They recommended that the item be modified to provide that it would be suifficient, in the absence of special circumstances, to disclose that: (i) the fund will distribute all of its net income and gains to its shareholders and that such distributions are taxable income or capital gains; and (ii) shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them. The Commission has amended Item 6(g) accordingly.

Item 7—Purchase of Securities Being Offered

Item 7, a proposed, required the registrant to provide certain information concerning the securities being offered by the registrant. Item 7(b) required "identification of the method of valuing the assets" of the fund. Two commentators questioned the meaning of the word "identification" as used in Item 7(b). One of them asserted that unless "identification" meant reciting the name of the method of valuation, this requirement should be moved to the Statement of Additional Information. The other commentator asserted that identification of valuation procedures is not useful to most investors and that this item should be revised to state that the fund's portfolio securities will be valued in accordance with applicable rules and regulations and will be "monitored" by the fund's board of directors. General Instruction G(3) defines the word "identify" in Form N–1A to mean that the registrant need provide only a minimum of explanation or description of the matters being identified. The Commission believes identification of the method of valuation will be more meaningful to investors than the suggested alternatives.

One commentator also expressed concern about the requirement of Item 7(b) that registrants disclose any situation in which a broker-dealer or bank may include a charge in connection with the sale of fund shares. That commentator argued that this information is unnecessary if the fund has reason to believe that there is disclosure concerning such charges in a "wrapper" to the prospectus. The Commission agrees with this comment and has modified Item 7(b) to provide that, if the registrant reasonably believes that charges by a broker-dealer or bank are disclosed in a wrapper or otherwise, the registrant does not need to include information concerning such charges in the prospectus.

Item 7(e), as proposed, required that the registrant disclose certain details concerning payments made pursuant to a rule 12b–1 [17 CFR 270.12b–1] distribution plan. One commentator urged that the information concerning rule 12b–1 plans required by this item be moved to Part C of the Form. This commentator contended that the prospectus would not identify any other particular fund expenses and argued that singling out rule 12b–1 plan expenses would place undue emphasis on these expenses. However, Form N–1A requires disclosure of various types of fund expenses, and the Commission believes that registrants should disclose distribution expenses pursuant to Item 7(e), especially since the amount of distribution expenses for many funds is significant and in some cases may exceed one percent of the registrant's assets. Two other commentators suggested that distribution expenses pursuant to rule 12b–1 should be described in the prospectus as a percentage of net assets and not as a total dollar figure. The Commission agrees with this comment and has modified Item 7(e) accordingly.

Two other commentators suggested that disclosure of rule 12b–1 plan expenses should be required only for plans that provide for actual payments to be made from fund assets and not in cases where the rule 12b–1 plan is, for example, for defensive purposes only. If a fund has adopted a rule 12b–1 plan but takes the position that it is not incurring any expenses thereunder directly or indirectly, disclosure in the prospectus as to that plan would not appear to serve any useful purpose. Form N–1A has been amended accordingly. However, the registrant still will be required to respond to Item 16(f)(i) (formerly 7(f)(i) of Part B, as proposed). The Commission is adopting Item 7(e) with the modification discussed herein.

Item 8—Redemption or Repurchase

Item 8, as proposed, required the registrant to disclose the various procedures for the redemption or repurchase of its shares. Concerning this item, five commentators suggested that disclosure of information about extraordinary methods of redemption should be moved to Part B. Certain of these commentators further suggested that, if Form N–1A were to permit information concerning extraordinary methods of redemption to be described in Part B, the Commission would need to modify the various rules that presently require such information to be presented in the prospectus. The Commission has considered the comments, and believes that registrants should have discretion to decide where they want to provide information concerning extraordinary methods of redemption. Therefore, this item has been amended, as well as rule 18f–1 [17 CFR 270.18f–1], rule 22d–1 [17 CFR 270.22d–1] and rule 22d–2 [17 CFR 270.22d–2] under the 1940 Act, to permit information concerning extraordinary methods of redemption to be described in either the prospectus or Part B.

Item 9—Pending Legal Proceedings

With regard to the requirements of Item 9 to describe briefly in the prospectus any proceedings instituted by a government authority or known to be contemplated by government authorities, one commentator questioned the meaning of the phrase "known to be contemplated." The commentator asserted that the phrase is ambiguous and should be deleted. Another commentator suggested that the information required by Item 9 should be moved to the Statement of Additional Information. The Commission has considered the comments and has determined to retain the information required by Item 9 in the prospectus, but has determined to delete the requirement that the registrant disclose any proceeding "known to be contemplated" by governmental authorities from Item 9 in order to avoid ambiguity.

II. Part B: Statement of Additional Information

Item 14—Management of the Fund

Item 14 (formerly Item 5 of Part B), as proposed, [11] required the registrant to provide information in the Statement of Additional Information concerning various characteristics of the management of fund. The Commission in its proposal included in this item a new requirement that the registrant identify any person who supervises the management of more than 25% of the fund's portfolio assets. The proposed release indicated that the reason for this new requirement was to satisfy institutional investors who expressed an interest in obtaining this information.

Nine commentators disagreed with this requirement. Several of the commentators argued that institutional investors have sufficient access to fund advisers to permit such investors to obtain whatever information they desire about the identities or duties of the individuals involved in the fund's portfolio management. In addition, the commentators argued that this requirement may: (i) interfere with the contractual responsibilities of the investment adviser; (ii) cause a problem with keeping Part B current; (iii) make it difficult for the registrant to identify particular individuals, depending on the particular organizational method used by the adviser; (iv) cause organizations to misstate the complex nature of the investment decision-making process and be misleading if a discussion of the full range of participation by all those who play a significant role in managing a fund's assets is not included; (v) encourage the development of a "star system" within some advisory organizations; and (vi) not provide useful or necessary information for the majority of individual investors. However, two commentators (an investment adviser and an individual investor) expressed the view that identification of the fund's portfolio manager is fundmental information concerning the registrant. The investor-commentator asserted that when the person primarily responsible for the fund's investment decisions is changed, "the fund becomes, for all practical purposes, a new entity." The adviser echoed this opinion by stating that "identification of the portfolio manager, or the management committee, if that is the structure, is of prime importance."

Notwithstanding the comments favoring adoption of this requirement, the Commission finds the arguments of the majority of the commentators persuasive. Therefore, Item 14 has been revised to delete the requirement to disclose the identity of the portfolio manager.

Item 14(c) (Formerly Item 5(d) of Part B), as proposed, required the registrant to disclose all remuneration paid to the various members of the fund's management if the remuneration exceeded $40,000. The Commission is adopting the suggestion of one commentator that the $40,000 disclosure threshold for remuneration required by Item 14(c) should be increased to $60,000 in order to be consistent with the requirements of Regulation S-K.

Item 16—Investment Advisory and other Services

Item 16 (formerly Item 7 of Part B), as proposed, required that the registrant provide in the Statement of Additional Information certain disclosure concerning the investment adviser and its background not already described in the prospectus. Item 16(a)(i) of the Form required that the business history of an investment adviser's controlling organization be discussed in Part B, if material. With regard to that item, one commentator argued that the business history of the adviser's controlling person would be material to an investor only if the controlling person were involved in securities laws violations. However, the controlling person's business history could be important to an investor for a number of reasons. Information concerning the length of time such controlling person has been engaged in business as an investment adviser or about other businesses of the controlling person related or unrelated to rendering investment advise may be significant depending on the particular circumstances. Accordingly, Item 16(a)(i) is being adopted as it was proposed.

Another commentator asserted that Item 16(f)(i), concerning amounts paid pursuant to a rule 12b–1 plan during the last fiscal year, duplicates material found in Item 7(e) in the prospectus, and should, therefore, be deleted from Part B. In response to this commentator, the Commission has revised Item 16(f)(i) to remove any disclosure requirements that duplicate information already requested by Item 7(e). The commentator also suggested that the requirement of Item 16(f)(iv) to discuss the benefits to the registrant resulting from a rule 12b–1 distribution plan is too judgmental and subjective and, therefore, should be deleted. The Commission disagrees with this comment. Rule 12b–1(e) under the 1940 Act requires that, before the board of directors of a fund implements or continues a distribution plan pursuant to rule 12b–1, the board must conclude that "there is a reasonable likelihood that the plan will benefit the company and its shareholders." In view of this rule requirement, the Commission believes that it is appropriate for the registrant to respond to this item. Item 16(f)(iv) will be adopted as proposed.

With regard to Item 16(h), concerning disclosure of the services provided by the fund's custodian and accountants, two commentators noted that such information is unnecessary since these services are routine and standardized throughout the mutual fund industry. Because of the importance of these functions, the Commission believes some disclosure is appropriate. Where the fund's custodian and accountants provide no more than the customary services, such disclosure may be brief.

Item 17—Brokerage Allocation

Item 17 (formerly Item 8 of Part B), as proposed, required disclosure by the registrant of information concerning its payment of brokerage commissions for transactions in portifolio securities. The four commentators on this item generally asserted that the information was either unnecessary and should be deleted, or should be moved to Part C of the Form.

As proposed, Item 17(a) (formerly Item 8(a) of Part B) stated that, if during either of the two years preceding the registrant's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the registrant differed markedly from the amount paid in the most recent year, the reasons for the differences should be provided. One of the commentators asserted that, in general, the only reasons for increased brokerage commissions are: (i) a general industry increase in commission fees charged by brokers, or (ii) an increase in the portfolio activity of the fund in question. That commentator asserted that, if either of these were the reasons for increased brokerage commissions, a discussion of the reasons would be of little consequence to investors. Another commentator also suggested that, if a material change in the amount of brokerage commissions resulted simply from a substantial increase or decrease in the size of the fund, a discussion of the reasons for the differences in brokerage commissions should not be necessary. Rather, the commentator urged that, if this requirement is kept, disclosure should be dependent upon

[11] The Commission has revised the numbering of the Items in Form N–1A in response to the views of the commentators and will indicate parenthetically the item number as proposed throughout the remainder of this release.

material differences in the portfolio turnover rate.

With regard to Item 17 as a whole, one commentator argued that the information required by Item 17 should be limited to instances in which the fund is using an affiliated broker-dealer. Another commentator suggested that information concerning brokerage allocation practices not be required for money market funds and other registrants that generally acquire portfolio securities in principal transactions, without payment of brokerage commissions.

After considering these comments, the Commission still believes that the disclosure of brokerage allocation practices in Item 17 is significant information that should be included in the Statement of Additional Information. An investor who requests the Statement of Additional Information may be interested in knowing more about significant increases or decreases in the dollar amounts of the fund's brokerage commissions. Further, the Commission believes that information concerning brokerage directed to brokers who are affiliated persons or affiliated persons of affiliated persons of the fund could be of interest to investors, and would be of particular interest to those investors who seek more information concerning brokerage allocation practices. Therefore, the Commission believes that, although many investors may not find this information important, those investors who desire more information concerning brokerage allocation practices should have access to this information in the Statement of Additional Information. Item 17 is, therefore, being promulgated in the same form as it was proposed.

Item 18—Capital Stock and Other Securities

Item 18 (formerly Item 9 of Part B), as proposed, required disclosure of the basic characteristics of the registrant's capital stock and any other securities authorized or issued by the registrant. Item 18(b), as proposed, required that the registrant provide information in the Statement of Additional Information concerning any authorized securities other than capital stock and any rights evidenced thereby. One commentator suggested that registrants who have securities outstanding other than capital stock should disclose that fact together with the rights evidenced thereby in the *prospectus*. Item 6(d) requires some information about other classes of securities in the prospectus, and the Commission believes that a fuller discussion concerning this subject should be provided in the Statement of Additional Information.

Item 20—Tax Status

Item 20 (formerly Item 11 of Part B), as proposed, required that the registrant disclose any material information concerning its tax status that is not contained in the prospectus. With regard to this Item, one commentator suggested that if a fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code, disclosure of that fact in the Statement of Additional Information should be sufficient for purposes of this item. The Commission agrees, and has modified Item 20 accordingly.

Item 22—Calculation of Yield Quotations of Money Market Funds

Item 22 (formerly Item 13 of Part B), as proposed, required that those investment companies that are, or hold themselves out to be, money market funds must provide an annual yield figure and may, at their discretion, provide an effective yield figure reflecting a compounding effect on a shareholder's investment. Two commentators suggested that the yield quotation requirement be amended to eliminate the condition that the yield be based on the last 7 days of the period covered by the most recent financial statements, urging that, by the time a prospectus is distributed, the yield figure may well be obsolete. One commentator suggested that a yield quotation based on the most recent financial statements should be included in the prospectus, as well as a quotation based on a more recent 7-day period not related to the financial statements. This commentator suggested, however, that the description of the computation should remain in the Statement of Additional Information as proposed. Another commentator suggested that rule 482 could be amended and promulgated instead under section 2(10)(b) of the 1933 Act [15 U.S.C. 77b(10)(b)], so that the rule 482 advertisement would not be an omitting prospectus.

As discussed earlier, the Commission has determined to include in the prospectus the annual yield quotation required under this item pursuant to Item 3(c). Registrants, at their discretion, may also provide an effective yield figure reflecting a compounding effect on a shareholder's investment. The disclosure concerning the formulas used should be included in Part B pursuant to this item. Both Part A and this item have been revised accordingly. The Commission will consider the issue of whether the yield quotation should be based on a more recent 7-day period not related to the fund's most recent financial statements in connection with the adoption of the final amendments to rule 482. (At the same time, the Commission will also consider whether to make technical modifications to the methods of yield computation.) For a fuller discussion of the temporary amendments to rule 482, readers are directed to Investment Company Act Release No. 13049 (February 28, 1983).[12]

Item 23—Financial Statements

Item 23 (formerly Item 14 of Part B), as proposed, required that registrants provide, as modified by the instructions to that item, the financial statements and schedules required by Regulation S-X [17 CFR 210]. Regulation S-X, however, was amended on December 6, 1982,[13] and is applicable to filings that include financial statements for a fiscal year ending after June 15, 1983. Therefore, the Commission has made certain technical modifications to Item 23 to conform that item with the amendments to Regulation S-X. The revisions to Item 23 either: (i) conform the references in that item to the new location of material in regulation S-X; (ii) delete references to Regulation S-X where the material no longer exists; or (iii) add references for Regulation S-X requirements that were adopted to recognize current industry practices.

Miscellaneous Questions Concerning Part B

In addition to the comments received concerning specific items of the Form, the Commission received comments regarding the requirements for updating Part B and the status of Part B as an independent document.

One commentator questioned whether, after updating Part B, a registrant must provide an updated Part B to every investor who had requested and received a prior version of Part B. The Commission does not believe that such further delivery is necessary. Since the prospectus will identify the date of the most current version of Part B,[14] the Commission is of the opinion that investors who received an updated prospectus could easily determine whether copies of Part B were current, and would be free to request an updated version if they desired.

Two commentators raised a question concerning whether the Statement of Additional Information would be considered a prospectus, which might

[12] 48 FR 10297 (March 11, 1983).

[13] Securities Act Release No. 6442, December 6, 1982 [47 FR 56835 (December 21, 1982)].

[14] *See* the discussion of Item 1 *supra*.

not contain the information required by section 10(a) of the 1933 Act, if the Statement of Additional Information was delivered alone and without prior delivery of the prospectus. The Commission believes that, if the issuer delivers the Statement of Additional Information prior to delivery of the statutory prospectus, the Statement of Additional Information might be considered a prospectus not complying with the requirements of section 5 of the 1933 Act. It should be noted that the Statement of Additional Information is not an omitting or summary prospectus pursuant to section 10(b) of the 1933 Act [15 U.S.C. 77j(b)].

III. Part C

Item 28—Business and Other Connections of Investment Adviser

One commentator questioned the usefulness of the disclosure required by Item 28 (formerly Item 5 of proposed Part C) concerning the business and professional connections of the registrant's investment adviser. The commentator concluded that this item should be deleted. However, this information is useful to the Commission and staff in connection with the review of registration statements. Item 28 will be adopted in the same form as it appeared in the release proposing Form N-1A.

Summary Prospectus

The final part of Form N-1A provides general instructions for a summary prospectus pursuant to rule 431 [17 CFR 230.431]. Several commentators questioned the value of continuing to provide for a summary prospectus in light of prospectus simplification. In the Commission's view it should be left to the discretion of the registrant whether or not to have a summary prospectus. In light of the fact that a synopsis need only be included at the discretion of the registrant, instruction (a) in the summary prospectus is modified to require a synopsis of the salient features of the registrant and the offering. Therefore, the provision concerning the summary prospectus is being adopted with the modification discussed herein.

New and Amended Rules

The disclosure format for Form N-1A substantially differs from other formats currently in use. The Commission observed in the proposing release that, as a result of this unique format, a number of rules under the various federal securities laws that are applicable to investment company prospectuses required revision, and the Commission proposed certain new rules to implement the necessary changes. The Commission received one general comment concerning these proposed rules. The commentator suggested that the Commission should not promulgate new rules that are exclusively applicable to Form N-1A, but instead should amend the existing rules and adopt these amended rules to accommodate both Form N-1 and Form N-1A. The Commission has considered this comment, but has concluded that because of the unique format of Form N-1A, the proposed new rules for Form N-1A should for the present be adopted in addition to the rules applicable to Form N-1. The existing rules will continue to apply to Form N-1, which, at least temporarily, will remain the registration form used by insurance company separate accounts that register as open-end management investment companies and will continue to be in effect for mutual funds during the transition period.

The Commission intends to implement the rule changes necessitated by the new form by adopting today certain rules that will be added under section 8(b) of the 1940 Act [15 U.S.C. 80a-8(b)] and to Regulation C under the 1933 Act. The new rules for Form N-1A to be added to Regulation C will be placed in the section of Regulation C concerning investment companies and involve technical changes from the existing rules and are intended to provide clarification of how certain rules should be applied the the three-part registration format of Form N-1A, as well as to delete inappropriate references to Form N-1. The new rules under section 8(b) also involve minor technical changes from existing rules and are intended to provide clarification of how certain existing rules should be applied to the three-part registration format. With regard to these proposed new rules, the Commission received only one specific comment, concerning proposed rule 8b-11A. Rules 8b-11A, as proposed, concerned the number of copies of the registration statement required to be filed with the Commission, signature requirements pertaining to the registration statement, and requirements for the binding of the registration statements. One commentator suggested that the requirement in the rule that "ribbon" copies of typed documents be filed with the Commission is no longer appropriate in light of current reproduction methods. The Commission agrees and has revised the rule accordingly. The Commission is adopting the other new rules as proposed.

In addition to the comments received concerning the proposed rules applicable to Form N-1A, the Commission received certain other comments regarding suggested rule amendments. One suggested rule amendment concerned the process to be followed in updating the Statement of Additional Information. Five commentators expressed the view that the Commission should make some provision for updating the Statement of Additional Information similar to that currently available for updating the prospectus. These commentators argued that without such relief a registrant would be able to update the Statement of Additional Information *only* by filing a post-effective amendment to the registration statement. These commentators further argued that requiring the fund to file a post-effective amendment every time the registrant wanted to make a change in the Statement of Additional Information was unnecessarily burdersome. One of these commentators suggested that the Commission should amend Instruction E to permit the registrant to "sticker" the Statement of Additional Information. Three other commentators suggested that the Commission amend rule 424 of Regulation C under the 1933 Act [17 CFR 230.424] to include within its provisions the Statement of Additional Information as well as the statutory prospectus. In light of these comments, the Commission has added new rule 497 which is adapted from current rule 424 by adding two new paragraphs specifically for registrants filing on Form N-1A.

Two commentators also suggested that rule 485 [17 CFR 230.485] be amended to reflect the two-part disclosure format of Form N-1A. Rule 485 permits post-effective amendments to registration statements filed by registered open-end management investment companies or unit investment trusts other than registered separate accounts to become effective immediately if the conditions of the rule are followed. The Commission has revised rule 485 to reflect the format of Form N-1A.

Guidelines for Registration Statements

Consistent with the Commission's practice of publishing the views of the staff to assist registrants, their counsel and others concerned with complying with applicable provisions of the federal securities laws, the Commission published for comment proposed Guidelines prepared by the Division of Investment Management (the "staff") for use in the preparation and filing of registration statements on Form N-1A

for open-end, management investment companies.

The Commission received six comments concerning the appropriateness of the proposed staff Guidelines. These and other commentators also provided more specific comments concerning particular Guidelines. Two of the commentators were generally in favor of the proposed guides. However, one of those commentators expressed concern that the codification of staff views in the new Guidelines would cause difficulty in modifying such Guidelines, even when the Guidelines became outmoded. Nevertheless, the commentators noted that adherence to staff Guidelines would expedite the examination of registration statements. Another commentator from the securities bar suggested that the Commission adopt Form N–1A without the Guides, but recommended that the Commission repropose the Guidelines for comment. Four commentators generally opposed the publication of the staff Guidelines and asserted that: (i) the staff would give the Guidelines the status of formal rules, even though they have not been formally adopted as such by the Commission, and (ii) such Guidelines result in regulation by disclosure. Another commentator stated that the Guidelines should not be used to resolve disclosure issues currently under dispute.

The Commission has carefully considered the foregoing comments and has determined to publish the Guidelines to Form N–1A with certain modifications, as described in Appendix B to this release. In response to comments received, the staff has also withdrawn Guides 4, 19 and 28. These changes should alleviate many of the commentators' concerns. A discussion of the comments received on the Guidelines and the specific changes made to the Guidelines pursuant to these comments are presented in Appendix B to this release together with the Guidelines themselves.

As discussed in the proposal, the Guidelines are a compilation of what the staff believes are applicable Commission releases and staff positions and interpretations, and their publication will assist registrants in expediting the registration process. However, publication of the views of the staff does not afford those views any legal status they would not otherwise have. Nor does such publication prevent the staff from applying the positions set forth in the Guidelines flexibly in light of particular circumstances or from changing those positions if appropriate.

Transition Period

Form N–1A, as adopted today, will eventually supplant Form N–1. However, in order to permit both the Commission and the industry to adjust to the new Form in an orderly way, the Commission is providing for a transition period of one year during which registrants may use either form. The Commission expects to propose revised registration forms for insurance company separate accounts in the near future. However, Form N–1 will be retained for use by such separate accounts after the one-year transition period discussed herein, if appropriate.

Conclusion

Based on the foregoing, the Commission has determined to adopt Form N–1A and various rules and amendements to rules in order to provide open-end management investment companies with a short, concise prospectus by which they can offer their securities for sale to the public.

List of Subjects

17 CFR Parts 230 and 239

Reporting Requirements and Securities

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, and Securities.

Text of Rules and Form

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the introductory text of paragraph (b)(2) of § 230.485 as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b)* * *

(2) Any prospectus or Statement of Additional Information filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus or Statement of Additional Information, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

* * * * *

2. By adding § 230.495 to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N–1A shall consist of the facing sheet of the applicable form; cross-reference sheet; a prospectus containing the information called for by such form; the information; list of exhibits; undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; any other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

(b) All general instructions, instructions to items of the form, and instructions as to financial statements, exhibits, or prospectuses are to be omitted from the registration statement in all cases.

(c) In the case of a registration statement filed on Form N–1A, Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as a part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be ommitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of this rule.

(d) In the case of a registration statement filed on Form N–1A, where any item of Form N–1A calls for information not required to be included in Parts A and B, (generally Part C of such form) the text of such items, including the numbers and captions thereof, together with the answers thereto shall be filed with Parts A and B under cover of the facing sheet of the form as a part of the registration statement. However, the text of such items may be omitted provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a

statement to that effect shall be made. Any financial statements not required to be included in Parts A or B shall also be filed as a part of the registration proper, unless incorporated by reference pursuant to Rule 411 § 230.411 of this chapter).

3. By adding § 230.496 to read as follows:

§ 230.496 Contents of prospectus used after nine months.

In the case of a registration statement filed on Form N–1A, there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

4. By adding § 230.497 to read as follows:

§ 230.497 Filing of prospectuses—number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement which varies from the form or forms of prospectus included in the registration statement as filed pursuant to § 230.402(a) of this chapter shall be filed as a part of the registration statement not later than the date such form of prospectus is first sent or given to any person: *Provided, however,* that an investment company advertisement which is deemed to be a prospectus pursuant to § 230.434d of this chapter and which is required to be filed pursuant to this paragraph shall not be filed as part of the registration statement.

(b) Within 5 days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

(c) For open-end management investment companies filing on Form N–1A [§ 239.12A and § 274.11A of this chapter], within 5 days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus and Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

(d) After the effective date of a registration statement no prospectus which purports to comply with section 10 of the Act and which varies from any form of prospectus filed pursuant to paragraph (b) or (c) of this rule shall be used until 10 copies thereof have been filed with, or mailed for filing to, the Commission, together with 5 copies of a cross reference sheet similar to that previously filed, if changed.

(e) For open-end management investment companies filing on Form N–1A, after the effective date of a registration statement no prospectus which purports to comply with section 10 of the Act or Statement of Additional Information which varies from any form of prospectus or Statement of Additional Information filed pursuant to paragraph (b) of this rule shall be used until copies thereof have been filed with, or mailed for filing to, the Commission, together with 5 copies of a cross reference sheet similar to that previously filed, if changed.

(f) Every prospectus consisting of a radio or television broadcast shall be reduced in writing. Five copies of every such prospectus shall be filed with the Commission at least 5 days before it is broadcast or otherwise issued to the public.

(g) Each copy of a prospectus filed under this rule shall contain in the upper right corner of the cover page the paragraph of this rule under which the filing is made and the file number of the registration statement to which the prospectus relates. The information required by this paragraph may be set forth in longhand, provided it is legible.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. By adding § 270.8b–11A to read as follows:

§ 270.8b–11A Number of copies-signatures-binding.

(a) In the case of a registration statement filed on Form N–1A, three complete copies of each part of the registration statement (including exhibits and all other papers and documents filed as part of part C of the registration statement) shall be filed with the Commission.

(b) At least one copy of the registration statement or report shall be manually signed in the manner prescribed by the appropriate form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the registration statement or report.

(c) Each copy of a registration statement or report filed with the Commission shall be bound in one or more parts, without stiff covers. The binding shall be made on the left-hand side and in such manner as to leave the reading matter legible.

6. By adding 270.8b–12A to read as follows:

§ 270.8b–12A Requirements as to paper, printing and language.

(a) In the case of a registration statement filed on Form N–1A, Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ by 11 inches in size, insofar as practicable. The prospectus and Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

(b) The registration statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. However, the registration statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The body of all printed registration statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data, including tabular data in notes, may be set in type at least as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

(d) Registration statements and reports shall be in the English language. If any exhibit or other paper or document filed with a registration statement or report is in a foreign

language, it shall be accompanied by a translation into the English language.

7. By revising paragraph (b)(1) of § 270.18f–1 as follows:

§ 270.18f–1 Exemption from certain requirements of section 18(f)(1) for registered open-end investment companies which have the right to redeem in kind.

* * * * *

(b) * * *

(1) shall be described in either the prospectus or the Statement of Additonal Information, at the discretion of the investment company, and

* * * * *

8. By revising paragraphs (a)(2), (b)(2) and (c)(2)(i) of § 270.22d–1 as follows:

§ 270.22d–1 Variations in sales load permitted for certain sales of redeemable securities.

* * * * *

(a) * * *

(2) The scale of reducing sales load and the method of computation utilized shall be specifically described in the prospectus or the Statement of Additional Information, at the discretion of the investment company, and shall be applicable to sales to all persons.

* * * * *

(b) * * *

(2) The scale of reducing sales load and the method of computation utilized shall be specifically described in the prospectus or the Statement of Additional Information, at the discretion of the investment company, and shall be applicable to all purchasers.

* * * * *

(c) * * *

(2) * * *

(i) The plan is described in the prospectus or Statement of Additional Information, at the discretion of the investment company;

* * * * *

9. By revising paragraph (a) of § 270.22d–2 as follows:

§ 270.22d–2 Sales of redeemable securities without a sale load following redemption.

(a) A registered investment company which is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempted from the provisions of Section 22(d) to the extent necessary to permit the sale of such securities by such persons at prices which reflect the elimination of the sales load pursuant to a uniform offer described, at the company's discretion, in either the prospectus or the Statement of Additional Information, to any person who has redeemed shares in such company and, with the proceeds of the redemption, purchases shares of such company, or of another investment company which offers shareholders in such company a no-load exchange privilege: Provide, however, (1) that such sale does not exceed the amount of the redemption proceeds (or that nearest full share if fractional shares are not purchased); (2) that no such sale may be made to any shareholder who has exercised the reinvestment privilege previously with respect to any redeemable security issued by such company; (3) that such redemption did not involve a refund of sales charges pursuant to Section 27(d) or 27(f) of the Act; (4) that such sale is effected within 30 days after such redemption, or within such lesser time as is described in either the prospectus or the Statement of Additional Information; and (5) that sales personnel and dealers receive no compensation of any kind based on the reinvestment.

* * * * *

10. By revising paragraph (a) and (c) of § 270.30d–1 as follows:

§ 270.30d–1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semiannually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions E and F of Item 18 of Form N–1, instructions 5 and 6 of Item 23 of Form N–1A, or Item 20 of Form N–2) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year occurring on or after the date of which the company's notification of registration under the 1940 Act is filed with the Commission.

* * * * *

(c) As the equivalent of any report required to be transmitted to shareholders by this rule, an open-end company may transmit a copy of its currently effective prospectus or Statement of Additional Information, or both, under the Securities Act, provided such prospectus or Statement of Additional Information, or both, include the following additional information: (1) in the case of the prospectus or Statement of Additonal Information, or both, serving as an annual or semiannual report, the remuneration disclosure required by section 30(d)(5) of the 1940 Act for the period for which the prospectus or Statement of Additional Information, or both, are serving as a report; (2) in the case of the prospectus or Statement of Additonal Information, or both, serving as a semiannual report, financial statements and condensed financial information for the fiscal half-year period of the report. Such prospectus or Statement of Additional Information, or both, shall be mailed within 60 days after the close of the period for which the report is being made.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

11. By adding § 239.15A to read as follows:

§ 239.15A Form N–1A, registration statement of open-end management investment companies.

Form N–1A shall be used for the registration under the Securities Act of 1933 of securities of open-end management investment companies other than separate accounts of insurance companies registered under the Investment Company Act of 1940 (on form N–1) (§ 270.11 of this chapter). This form is also to be used for the registration statement of such companies pursuant to Section 8(b) of the Inventment Company Act of 1940 (§ 270.11A of this chapter). This form is not applicable for small business investment companies which register pursuant to § 349.24 and § 374.5 of this chapter.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. By adding § 274.11A to read as follows:

§ 274.11A Form N–1A, registration statement of open-end management investment companies.

Form N–1A shall be used as the registration statement to be filed pursuant to Section 8(b) of the Investment Company Act of 1940 by open-end management investment companies other than separate accounts of insurance companies or companies which issue periodic payment plan certificates or which are sponsors or depositors of companies issuing such certificates. This form shall be used for registration under the Securities Act of 1933 of the securities of all open-end management investment companies other than registered separate accounts of insurance companies. This form is not applicable for small business investment companies which register pursuant to § 293.24 and § 274.5 of this chapter.

Summary of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Form N-1A promulgated herein. The Analysis notes that the three-part form will substantially simplify and shorten the present fund prospectus making it more comprehensible to prospective investors while at the same time enabling more sophisticated investors to receive more extensive information upon request.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Gregory K. Todd, Esq., Office of Disclosure Legal Services, Securities and Exchange Commission, Room 5128, 450 Fifth Street, N.W., Washington, D.C. 20549.

Statutory Authority

The Commission hereby adopts Form N-1A and rules 495, 496 and 497 and amends rule 485 under the Securities Act of 1933 and adopts rules 8b-11A and 8b-12A and amends rules 18f-1, 22d-1, 22d-2 and 30d-1 under the Investment Company Act of 1940, pursuant to the provisions of sections 7, 10, and 19 of the Securities Act of 1933 [15 U.S.C. 77g, 77j, and 77s] and sections 8, 30 and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-29 and 80a-37].

By the Commission.

George A. Fitzsimmons,

Secretary.

August 12, 1983.

Note.—This Appendix will not appear in the CFR.

Appendix A

Form N-1A

Securities and Exchange Commission, Washington, D.C. 20549

Form N-1A

Registration Statement Under the Securities Act of 1933 ☐
Pre-Effective Amendment No. —— ☐
Post-Effective Amendment No. —— ☐
and/or
Registration Statement Under the Investment Company Act of 1940 ☐
Amendment No. ——
(Check appropriate box or boxes.)

(Exact Name of Registrant as Specified in Charter)

(Address of Principal Executive Offices)

(Zip Code)——————
Registrant's Telephone Number, including Area Code——————

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering

It is proposed that this filing will become effective (check appropriate box)
—Immediately upon filing pursuant to paragraph (b)
—on (date) pursuant to paragraph (b)
—60 days after filing pursuant to paragraph (a)
—on (date) pursuant to paragraph (a) of rule 485

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

If the Registration Statement or an amendment thereto is being filed under only one of the Acts, reference to the other Act should be omitted from the facing sheet. The "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee under the Securites Act of 1933 should be included only where shares are being registered under the Securities Act of 1933. Registrants that are registering an indefinite number of shares under the Securities Act of 1933 in accordance with the provisions of Rule 24f-2 under the Investment Company Act of 1940 [17 CFR 270.24f-2] should include the declaration required by Rule 24f-2(a)(1) on the facing sheet, in lieu of the table showing the calculation of the registration fee under the Securities Act of 1933 or in combination therewith, as appropriate.

Investment Company Act—Forms

Contents of Form N-1A

General Instructions
A. Rule as to Use of Form N-1A
B. Registration Fees
C. Application of General Rules and Regulations
D. Amendments
E. Incorporation by Reference
F. Documents Comprising the Registration Statement or Amendment
G. Preparation of the Registration Statement or Amendment
Part A—Information Required in a Prospectus
Item 1. Cover Page
Item 2. Synopsis
Item 3. Condensed Financial Information
Item 4. General Description of Registrant
Item 5. Management of the Fund
Item 6. Capital Stock and other Securities
Item 7. Purchase of Securities Being Offered
Item 8. Redemption of Repurchase
Item 9. Legal Proceedings
Part B—Information Required in a Statement of Additional Information
Item 10. Cover Page
Item 11. Table of Contents
Item 12. General Information and History
Item 13. Investment Objectives and Policies
Item 14. Management of the Registrant
Item 15. Control Persons and Principal Holders of Securities
Item 16. Investment Advisory and Other Services
Item 17. Brokerage Allocation
Item 18. Capital Stock and Other Securities
Item 19. Purchase, Redemption and Pricing of Securities Being Offered
Item 20. Tax Status
Item 21. Underwriters
Item 22. Calculation of Yield Quotations of Money Market Funds
Item 23. Financial Statements
Part C—Other Information
Item 24. Financial Statements and Exhibits
Item 25. Persons Controlled by or Under Common Control
Item 26. Number of Holders of Securities
Item 27. Indemnification
Item 28. Business of Other Connections of Investment Adviser
Item 29. Principal Underwriters
Item 30. Location of Accounts and Records
Item 31. Management Services
Item 32. Undertakings
Signatures
Summary Prospectus

General Instructions

A. Rule as to Use of Form N-1A

Form N-1A shall be used by all open-end management investment companies except small business investment companies licensed as such by the United States Small Business Administration and insurance company separate accounts as defined in Section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)] for filing: (1) an initial registration statement required by Section 8(b) of the 1940 Act. [15 U.S.C. 80a-8(b)], (2) an annual amendment thereto, (3) a registration statement required under the Securities Act of 1933 ("1933 Act") and any amendments thereto, or (4) any combination of the above 1940 Act and 1933 Act filings.

B. Registration Fees

Section 6(b) of the 1933 Act [15 U.S.C. 77f(b)] and Rule 457 [17 CFR 230.457] thereunder set forth the fee requirements under the 1933 Act. Rule 8b-6 under the 1940 Act [17 CFR 270.8b-6] sets forth the fee requirements for filing an initial registration statement under that Act. The 1940 Act fee is in addition to the fee required to be paid under the 1933 Act. Registrants that are increasing the number or amount of securities registered or registering an indefinite number of their shares are also directed to Rule 24e-2 and 24f-2, respectively, under the 1940 Act [17 CFR 270.24e-2 and 270.24f-2] for purposes of computing the filing fee.

C. Application of General Rules and Regulations

If the registration statement is being filed under both Acts or under only the

1933 Act, the General Rules and Regulations under the 1933 Act, particularly those comprising Regulation C [17 CFR 230.400–494], shall apply, and compliance therewith will be deemed compliance with the corresponding Rules pertaining to Registration Statements under the 1940 Act. However, if the registration statement is being filed under only the 1940 Act, the General Rules and Regulations under that Act, particularly those comprising Regulation 8(b) [17 CFR 270.8b–1 to 270.8b–32], shall apply, except as noted in General Instruction D below.

D. Amendments

1. Attention is specifically directed to Rule 8b–16 under the 1940 Act [17 CFR 270.8b–16] which requires the annual amendment of Registration Statements filed pursuant to Section 8(b) of the 1940 Act. Where Form N–1A has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet. Irrespective of the purpose for which an amendment is filed, the number of copies of amendments specified in Rule 472 under the 1933 Act [17 CFR 230.472] shall be filed with the Commission.

E. Incorporation by Reference

A Registrant may, at its discretion, incorporate any or all of the Statement of Additional Information (the "Statement") into the prospectus delivered to potential and other investors, without physically delivering the Statement with the prospectus, so long as the Statement is available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement are provided along with the Statement to each person to whom the Statement is sent or given.

Attention is directed to Rule 411 under the 1933 Act [17 CFR 230.411], and Rules 0–4, 8b–23 and 8b–32 under the 1940 Act [17 CFR 270.0–4, 270.8b–23 and 270.8b–32] for guidelines governing incorporation by reference into a registration statement filed on Form N–1A of information contained in other statements, applications or reports filed with the Commission. In general, a Registrant may incorporate by reference, in answer to any item in a registration statement filed on Form N–1A not required to be included in a prospectus, any information contained elsewhere in the registration statement of any information contained in other statements, applications or reports filed with the Commission.

Attention is also directed to Rule 24 of the Commission's Rule of Practice [17 CFR 201.24]. The above incorporation by reference rules under both the 1933 Act and the 1940 Act are subject to the limitations of Rule 24. Since the provisions of Rule 24 may be amended from time to time, Registrants are advised to review the Rule as it is in effect at the time the Registration Statement is filed prior to incorporating by reference any document as an exhibit to such Registration Statement.

Subject to the above rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 3(a) or 23 of the Form or both the information contained in any report to shareholders meeting the requirements of Section 30(d) of the 1940 Act [15 U.S.C. 80a–29(d)] and Rule 30d–1 [17 CFR 270.30d–1] thereunder, provided the following additional conditions are satisfied:

1. The material that is incorporated by reference is prepared in accordance with, the covers the periods specified by, this Form;

2. The Registrant includes a statement at the place in the prospectus or the Statement of Additional Information where the information required by Items 3(a) or 23 of the Form, respectively, would otherwise appear that the information is incorporated by reference from a report to shareholders. The Registrant, at its option, may also specifically describe, in either the prospectus, the Statement of Information or Part C of the Registration Statement (in response to Item 24(a)), of any combination thereof, those portions of the report to shareholders that are not incorporated by reference and are not a part of the Registration Statement; and

3. The material incorporated by reference into the prospectus or the Statement of Additional Information is provided along with the prospectus or the Statement of Additional Information to each person to whom the prospectus or the Statement of Additional Information is sent or given, unless the person to whom such prospectus or the Statement of Additional Information is provided currently holds securities of the Registrant and otherwise has received a copy of the material incorporated by reference, in which case the Registrant shall state in the prospectus or the Statement of Additional Information that it will furnish, without charge, a copy of such report on request, and the name, address and telephone number of the person to whom such a request should be directed.

F. Documents Comprising Registration Statement or Amendment

1. A registration statement or an amendment thereto filed under both the 1933 and 1940 Acts shall consist of the facing sheet of the Form, Part A, Part B, Part C, required signatures, and all other documents which are required or which the Registrant may file as a part of the registration statement.

2. Except for an amendment to a 1933 Act registration statement filed only pursuant to the provisions of Sections 24(e) or (f) of the 1940 Act, [15 U.S.C. 80a–24(e), 80a–24(f)] a registration statement or an amendment thereto which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction F.

3. An amendment to a 1933 Act registration statement filed only pursuant to the provisions of Section 24(e) or (f) of the 1940 Act to register additional securities need only consist of the facing sheet of the Form, required signatures, and, if filed pursuant to Section 24(e) of the 1940 Act, an opinion of counsel as to the legality of the securities being registered. Registrants are reminded that an opinion of counsel is required to accompany a Rule 24f–2 notice that must be filed by Registrants that have registered an indefinite number of their shares.

4. A registration statement or an amendment thereto which is filed under only the 1940 Act shall consist of the facing sheet of the Form, responses to all Items of Parts A and B except Items 1, 2, and 3 of Part A thereof, responses to all items of Part C except items 24(b)(6), 24(b)(10), 24(b)(11) and 24(b)(12), required signatures, and all other documents which are required or which the Registrant may file as part of the registration statement.

G. Preparation of the Registration Statement or Amendment

Instructions for the completion of Form N–1A are divided into three parts. Part A pertains to information that must be in the prospectus required by Section 10(a) of the Securities Act of 1933. Part B pertains to information that must be in the Statement of Additional Information that must be provided upon request to recipients of the prospectus. Part C pertains to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will assist investors in making informed decisions

about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, care should be taken that the information in the prospectus is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive detail may make the prospectus difficult for many investors to understand and may, therefore, detract from its usefulness. Accordingly, Registrants should adhere to the following guidelines in responding to the items in Part A:

1. Responses to these items, particularly those that call for a brief description, should be as simple and direct as reasonably possible and should include only as much information as is necessary to an understanding of the fundamental characteristics of the Registrant. Brevity is particularly important in describing practices or aspects of the Registrant's operations that do not differ materially from those of other investment companies.

2. Descriptions of practices that are necessitated or otherwise affected by legal requirements should generally not include detailed discussions of such requirements.

3. Responses to those items that use terminology such as "list" or "identify" should include only a minimum of explanation or description of the matters being listed or identified.

Part B: Statement of Additional Information

The items in Part B are designed to elicit additional information about Registrants that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to require in the prospectus, but which may be of interest to at least some investors. In addition, Part B affords Registrants an opportunity to augment discussions of the matters described in the prospectus by including additional information about such matters that Registrants believe may be of interest to some investors.

In most cases it should not be necessary for Registrants to duplicate in Part B, information that is required to be contained in the prospectus. However, it should be noted that the prospectus and the Statement of Additional Information are independent documents. Therefore, Part B of this Form N-1A, the Statement of Additional Information, should be prepared so as to be comprehensible standing alone.

General Instructions for Parts A and B

1. The information contained in the prospectus and the Statement of Additional Information should be organized in such a way as to enhance understanding of the organization and operation of the Registrant. However, the information required by the items need not be set forth in the prospectus or the Statement of Additional Information in any particular order, the following exceptions:

(a) Items 1, 2 and 3 of Part A must be set forth in the prospectus in the same order in which the Items appear in this Form.

(b) Item 3 of Part A, "Condensed Financial Information," should not be further back in the prospectus than the fifth page thereof and should not be preceded by any other chart or table (except for the table of contents required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act).

2. The prospectus or the Statement of Additional Information may include information in addition to that called for by the applicable items of this Form, provided that such information is not incomplete, inaccurate, or misleading. However, care should be taken that inclusion of such information does not, by virtue of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included.

3. The prospectus provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act [17 CFR 230.423]. Furthermore, the Statement of Additional Information should be made available to investors as of the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the 1933 Act [17 CFR 230.430, 230.460].

4. Instructions for charts, graphs, tables and sales literature:

(a) A Registration Statement on this Form may include any chart, graph or table that is not misleading; however, no chart, graph or table should precede the condensed financial information specified in Item 3.

(b) If "sales literature" is included in the prospectus, the issuer should be aware of the following: (1) sales literature should not be of such quantity as to lengthen the prospectus, and it should not be so placed as to obscure essential disclosure and (2) members of the National Association of Securities Dealers, Inc. (NASD) are not relieved of the filing and other requirements of the NASD with respect to investment company sales literature (See Securities Act Release No. 5359, January 26, 1973 [38 FR 7220 (March 19, 1973)].

Part A—Information Required In A Prospectus

Item 1. *Cover Page*

(a) the outside cover page is required to contain the following information:

(i) the Registrant's name;

(ii) identification of the type of fund (e.g., money market fund, bond fund, balanced fund, etc.) or a brief statement of the Registrant's investment objectives;

(iii) a statement or statements that (A) the prospectus sets forth concisely the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) additional information about the Registrant has been filed with the Commission and is available upon request and without charge (This statement should include appropriate instructions about how to obtain such additional information and whether any of the Statement of Additional Information has been incorporated by reference into the prospectus.);

(iv) the date of the prospectus, and the date of the Statement of Additional Information;

(v) the statement required by Rule 48(b)(1) [17 CFR 230.481(b)(1)] under the 1933 Act; and

(vi) such other items of information as are required by rules of the Commission or of any other governmental authority having jurisdiction over the Registrant for the issuance of its securities.

(b) The cover page may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of the information required to be presented.

Item 2. *Synopsis*

(a) The Registrant should include a synopsis of the information contained in the prospectus where the length or complexity of the prospectus makes such a synopsis appropriate. (If the prospectus without a synopsis would be twelve pages or less when printed in the manner in which it is to be delivered to investors, a synopsis should not normally be necessary).

(b) If included in the prospectus, the synopsis should be a clear and concise description of the salient features of the offering and the Registrant, with appropriate cross-references to relevant disclosures elsewhere in the prospectus

or in the Statement of Additional Information required by Part B of the registration statement.

Item 3. *Condensed Financial Information*

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in Rule 6-03 [17 CFR 210.6-03] of Regulation S-X.

Per Share Income and Capital Changes

(for a share outstanding throughout the year)

1. Investment income;
2. Expenses;
3. Net investment income;
4. Dividends from net investment income;
5. Net realized and unrealized gains (losses) on securities;
6. Distributions from net realized gains on securities;
7. Net increase (decrease) in net asset value;
8. Net asset value at beginning of period;
9. Net asset value at end of period;
10. Expenses to average net assets;
11. Net investment income to average net assets;
12. Portfolio turnover rate;
13. Number of shares outstanding at end of period.

Instructions

1. The information shall be presented in comparative columnar form for each of the last ten fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less) but only for periods subsequent to the effective date of Registrant's first 1933 Act Registration Statement. In addition, the information shall be presented for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished.

2. Per share amounts shall be given at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then the amounts on the table shall be given in tenths of a cent.

3. Appropriate adjustments shall be made and indicated in a footnote to reflect any stock split-up or stock dividend during the period.

4. If the investment adviser has been changed during the period covered by this Item, the date(s) of such change(s) should be shown in a footnote.

5. The condensed financial information for not less than the latest five fiscal years shall be audited and shall so state. The auditor's statement pertaining to the condensed financial information need not be included in the prospectus.

6. The amount to be shown at caption 3 is derived by adding (deducting) the increase (decrease) per share in undistributed net income for the year to dividends from net investment income per share for the year (caption 4). Such increase (decrease) may be derived from a comparison of the per-share figures obtained by dividing the undistributed net income at the beginning and end of the year by the number of shares outstanding on those respective dates. (Any other acceptable method should be explained in a footnote to this table.) The amounts to be shown at captions 1 and 2 are derived by applying to the net investment income on a per-share basis the ratio of such items, as shown in the financial statements prepared under Rule 6-04 [17 CFR 210.6-04] of Regulation S-X, to the net income as shown in such statements.

7. "Expenses," as used in caption 2 above, include the expenses described in caption 2 of Rule 6-07 of Regulation S-X. If there were income deductions such as those described in captions 3 and 5 of that Rule, compute the per-share amounts thereof and state them separately immediately after caption 2 above.

8. The amount to be shown at caption 5, while mathematically determinable by the summation of amounts computed for as many periods during the year as shares were sold or repurchased (which could be as often as twice daily) is also the balancing figure derived from the other figures in the statement and should be so computed. The amount shown at this caption for a share outstanding throughout the year may not accord with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchase of Registrant's shares in relation to fluctuating market values for the portfolio.

9. Distributions not exceeding the capital gains computed on the Federal tax basis may be treated as distributions from net realized profits on securities for purposes of the above table, even though they exceed such profits on a book basis.

10. If any distributions were made from capital sources other than net realized profits on securities, state the per share amounts thereof separately immediately below caption 6. In a footnote indicate the nature of such distributions.

11. The "average net assets," as used in captions 10 and 11, shall be computed upon the basis of the value of the net assets determined no less frequently than as of the end of each month.

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. The rate of portfolio turnover shall be calculated by dividing (A) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (B) the monthly average of the value of the portfolio securities owned by the Registrant during the particular fiscal year. Such monthly average shall be calculated by totaling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months, and dividing the sum by 13.

b. For purposes of this Item, there shall be excluded from both the numerator and the denominator all U.S. Government securities (short-term and long-term) and all other securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares, it shall exclude from purchases the value of securities so acquired, and from sales, all sales of such securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. In such event, the Registrant shall also make appropriate adjustment in the denominator of the portfolio turnover computation. The Registrant shall make appropriate disclosure of such exclusions and adjustments in its answer to this item.

d. Short sales, and put and call options expiring more than one year from date of acquisition, are included in purchases and sales for purposes of this Item. A short sale should be treated as an increase in sales and the covering of a short sale should be treated as an increase in purchases.

13. The number of shares outstanding at the end of each period may be shown to the nearest thousand (000 omitted), provided it is indicated that such has been done.

(b) Furnish the following information as of the end of each of the Registrant's last ten fiscal years with respect to each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, the information shall be furnished on a consolidated basis:

(1) Year	(2) Amount of debt outstanding at end of period.	(3) Average amount of debt outstanding during the period.	(4) Average number of registrant's shares outstanding during the period.	(5) Average amount of debt per share during the period.

Instructions

1. Instructions 1, 2 and 5 to Item 3(a) shall also apply to this sub-item.

2. The method used to determine the averages shown above (e.g., weighted, monthly, daily, etc.) shall be appropriately set forth.

3. Column 5 is derived by dividing the amount shown in column 3 by the number shown in column 4.

(c) For a registrant which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, furnish: (1) a yield quotation based on the seven days ended on the date of the most recent financial statements of the Registrant

included in the prospectus or Statement of Additional Information, computed by determining the new change exclusive of capital changes in the value of a hypothetical preexisting account having a balance of one share at the beginning of the period, dividing the net change in account value by the value of the account at the beginning of the base period to obtain the base period return, and multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent; and (2) the length of and the base period used in computing that quotation.

Instructions

1. For purposes of calculating the yield quotation required in subsection (c) above, the determination of net change in account value must reflect:

(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original share and any such additional shares; and

(b) All fees that are charged to all shareholder accounts, in proportion to the length of the base period and the fund's average account size.

2. The capital changes to be excluded from the calculation of yield required by this item are realized gains and losses from the sale of securities and unrealized appreciation and depreciation.

3. In connection with the presentation of the yield quotation, the prospectus must disclose any material net change in the yield figure that would result from the inclusion of capital changes that are excluded in the computation pursuant to this Item.

4. In addition to the yield quotation required by this Item, the registrant may also include a quotation of effective yield, carried to at least the nearest hundredth of one percent, computed by compounding the unannualized base period return by dividing the base period return by 7, adding 1 to the quotient, raising the sum to the 365th power, and subtracting one from the result, according to the following formula.

$$\text{Effective yield} = (\text{base period return}/7 + 1)^{365} - 1.$$

5. The registrant need not include in the prospectus the method of calculating the yield quotation described in Item 3(c), above. Nevertheless, the Registrant should include the method of calculating this yield figure in the Statement of Additional Information in response to Item 22.

Item 4. *General Description of Registrant*

(a) Concisely discuss the organization and operation or proposed operation of the Registrant. Include the following:

(i) Basic identifying information, including:

(A) The date and form of organization of the Registrant and the name of the state or other sovereign power under the laws of which it is organized; and

(B) The classification and subclassification of the Registrant pursuant to Sections 4 and 5 of the 1940 Act [15 U.S.C. 80a–4, 80a–5];

(ii) A concise description of the investment objectives and policies of the Registrant, including:

(A) If those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect;

(B) A brief discussion of how the Registrant proposes to achieve such objectives including:

(1) A short description of the types of securities in which Registrant invests or will invest principally and, if applicable, any special investment practices or techniques that will be employed in connection with investing in such securities; and

(2) If the Registrant proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries. (Concentration, for purposes of this item, is deemed to be 25% or more of the value of Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be inconsistent with Registrant's name.);

(C) Subject to subparagraph (b) of this Item, identification of any other policies of the Registrant that may not be changed without the vote of the majority of the outstanding voting securities, including those policies which the Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act;

(D) Subject to subparagraph (b) of this Item, a concise description of those significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (B) or (C) above that Registrant employs or has the current intention of employing in the foreseeable future.

(b) Discussion of types of investments that will not constitute Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically, and notwithstanding paragraph (a) above:

(i) If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the Registrant has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy; and

(ii) If such a policy has the effect of limiting a particular practice in such a way that no more than 5% of Registrant's net assets are at risk, or, if Registrant has not followed that practice within the last year in such a manner that more than 5% of Registrant's net assets were at risk, and does not have a current intention of following such practice in the foreseeable future in such a manner that more than 5% of Registrant's net assets will be at risk, disclosure of information in the prospectus about such practice should be limited to that which is necessary to identify the practice.

(c) Discuss briefly the principal risk factors associated with investment in Registrant, including factors peculiar to the Registrant as well as those generally attendant to investment in an investment company with investment policies and objectives similar to Registrant's.

Item 5. *Management of the Fund*

Describe concisely how the business of the Registrant is managed, including:

(a) A brief description of the responsibilities of the board of directors with respect to management of the Registrant. (In responding to this item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Registrant's jurisdiction of organization with respect to management of the Registrant.)

(b) For each investment adviser of the Registrant:

(i) The name and address of the investment adviser and a brief description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business. (If the investment adviser is subject to more than one level of control, it is sufficient to give the name of the ultimate control person.);

(ii) A brief description of the services provided by the investment adviser. (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of directors, responsible for overall management of Registrant's business affairs, it is sufficient to state that fact in lieu of listing all services provided.);

(iii) A brief description of the investment adviser's compensation. (If the registrant has been in operation for a

full fiscal year, provide the compensation paid to the adviser for the most recent fiscal year as a percentage of average net assets. No further information is required in response to this Item if the adviser is paid on the basis of a percentage of net assets and if the Registrant has neither changed investment advisers nor changed the basis on which the adviser is compensated during the most recent fiscal year. If the fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment. If the registrant has not been in operation for a full fiscal year, state generally what the investment adviser's fee will be as a percentage of average net assets, including any breakpoints, but it is not necessary to include precise details as to how the fee is computed or paid.)

(c) The identity of any other person who provides significant administrative or business affairs management services (e.g., an "Administrator"), and a brief description of the services provided and the compensation to be paid therefor;

(d) The name and principal business address of the transfer agent and the dividend paying agent;

(e) A statement as to the Registrant's expenses. (If the Registrant has been in existence for a full year, it is sufficient to set forth the Registrant's total expenses for the most recent full fiscal year as a percentage of average net assets unless the Registrant expects to incur a material amount of extraordinary expenses in the next year. If the Registrant has not been in operation for a full year, list the types of expenses for which Registrant will be responsible.);

(f) If Registrant engages in any of the following practices, a statement to that effect:

(i) Paying brokerage commissions to any broker

(A) Which is an affiliated person of the Registrant, or

(B) Which is an affiliated person of such person, or

(C) An affiliated person of which is an affiliated person of the Registrant, its investment adviser, or its principal underwriter; and

(ii) Allocating brokerage transactions in a manner that takes into account the sale of investment company securities.

Item 6. *Capital Stock and Other Securities.*

(a) Describe concisely the nature and most significant attributes of the security being offered, including: (i) a brief discussion of voting rights; (ii) restrictions, if any, on the right freely to retain or dispose of such security; (iii) and any material obligations or potential liability associated with ownership of such security (not including investment risks).

(b) Identify each person who as of a specified date no more than 30 days prior to the date of filing of this registration statement, controls the Registrant. (For purposes of this Item, the term "control" is defined in the instruction to Item 15(a) for Form N-1A.)

(c) If the rights of holders of such security may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(d) If Registrant has any other classes of securities outstanding (other than bank borrowings or borrowings that are not senior securities under Section 18(g) of the 1940 Act [15 U.S.C. 80a-18(g)]), identify them and state whether they have any preference over the security being offered.

(e) Describe how shareholder inquiries should be made.

(f) Describe briefly the Registrant's policy with respect to dividends and distributions, including any options shareholders may have as to the receipt of such dividends and distributions.

(g) Describe briefly the tax consequences to investors of an investment in the securities being offered. Such description should not include detailed discussions of applicable law. If the Registrant intends to qualify for treatment under Subchapter M, it is sufficient, in the absence of special circumstances, to state briefly that in that case: (i) the Registrant will distribute all of its net income and gains to shareholders and that such distributions are taxable income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the Registrant but that shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them; and that (iii) the Registrant will inform shareholders of the amount and nature of such income or gains.

Item 7. *Purchase of Securities Being Offered*

Describe briefly how the securities being offered may be purchased. The description should emphasize the procedures to be followed and should minimize discussion of applicable legal requirements. Include:

(a) The name and principal business address of any principal underwriter for the Registrant. (If any affiliated person of Registrant is an affiliated person of the principal underwriter, so state and identify such person);

(b) A concise explanation of the way in which the public offering price is determined including: (i) an explanation that the price is based on net asset value and identification of the method used to value the assets (e.g., market value, good faith determination, amortized cost); (ii) a statement as to when calculations of net asset value are made and that the price at which a purchase is effected is based on the next calculation of net asset value after the order is placed, (iii) the sales charge, if any, as a percentage of the public offering price and as a percentage of the net amount invested for each breakpoint; (iv) the sales load reallowed to dealers as a percentage of the public offering price (the percentages in (iii) and (iv) should be shown in a tabular presentation); and (v) if any person, such as a broker-dealer or bank, may with Registrant's knowledge impose any charges in connection with purchases, a statement to that effect, unless the Registrant reasonably believes that those charges are adequately disclosed to investors by the use of a "wrapper" to the prospectus or otherwise.

(c) If there are any special purchase plans or methods (e.g., letters of intent, accumulation plans, withdrawal plans, exchange privileges, services in connection with retirement plans), list them and state from whom additional information may be obtained;

(d) Any minimum initial or subsequent investment; and

(e) If Registrant directly or indirectly pays distribution expenses pursuant to Rule 12b-1 under the 1940 Act [17 CFR 270.12b-1], list the principal types of activities for which payments are or will be made, and (i) if the plan has been in effect for a full fiscal year, give the total amount spent in the most recent fiscal year as a percentage of net assets; or (ii) otherwise briefly describe the basis on which payments will be made (e.g., percentage of net assets, etc.).

Item 8. *Redemption or Repurchase*

(a) Describe briefly in the prospectus all procedures for redeeming the Registrant's shares, any restrictions thereon, and any charges that may be attendant upon redemption, except redemptions made pursuant to Rules 18f-1 [17 CFR 270.18f-1], 22d-1 [17 CFR 270.22d-1] and 22d-2 [17 CFR 270.22d-2]. Information concerning methods of redemption pursuant to those rules may be provided by the Registrant, at its discretion, in either the prospectus or the Statement of Additional Information. If Registrant, under normal circumstances, intends to redeem in kind, that fact should be disclosed.

(b) Describe briefly any procedure whereby a shareholder can sell his shares to the Registrant or its underwriter through a broker-dealer and, if charges may be made for such service, so note. The specific fees for such service that may be charged by the broker-dealer selected by the shareholder need not be disclosed.

(c) If the Registrant is permitted to redeem shares involuntarily in accounts below a certain number or value of shares, describe briefly.

(d) If the Registrant may refuse to honor a request for redemption for a certain time after a shareholder's investment, describe briefly.

Item 9. *Pending Legal Proceedings*

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or the investment adviser or principal underwriter of the Registrant is a party. Include the name of the court in which the proceedings are pending, the date instituted, and the principal parties thereto. Include similar information as to any proceedings instituted by governmental authorities.

Instruction

Legal proceedings, for purposes of litigation or governmental proceedings to which the investment adviser or principal underwriter of the Registrant is a party, are material only to the extent that: (1) they are likely to have a material adverse effect upon the ability of the investment adviser or principal underwriter to perform its contract with the Registrant; or (2) they are likely to have a material adverse effect on the Registrant.

Part B—Information Required in a Statement of Additional Information

Item 10. *Cover Page*

(a) The outside cover page is required to contain the following information:

(i) The Registrant's name;

(ii) A statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read in conjunction with the prospectus; and (C) from whom a copy of the prospectus may be obtained.

(iii) The date of the prospectus to which the Statement of Additional Information relates and such other identifying information as the Registrant deems appropriate.

(iv) The date of the Statement of Additional Information.

(b) The cover page may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of the information required to be presented.

Item 11. *Table of Contents*

Set forth under appropriate captions (and sub-captions) a list of the contents of the Statement of Additional Information and, where useful, provide cross-references to related disclosure in the prospectus.

Item 12. *General Information and History*

If the Registrant has engaged in a business other than that of an investment company during the past five years, state the nature of the other business and give the approximate date on which the Registrant commenced business as an investment company. If the Registrant's name was changed during that period, state its former name and the approximate date on which it was changed. If the change in the Registrant's business or name occurred in connection with any bankruptcy, receivership or similar proceeding or any other material reorganization, readjustment or succession, briefly describe the nature and results of the same.

Item 13. *Investment Objectives and Policies*

(a) Describe clearly the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure with respect to those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, Registrant should make sufficient reference to the prospectus to clarify the context in which the additional information called for by this Item is being provided.

(b) To the extent that the prospectus does not do so, describe any fundamental policy of the Registrant with respect to each of the following activities:

(1) The issuance of senior securities.

(2) Short sales, purchases on margin and the writing of put and call options.

(3) The borrowing of money. Describe the fundamental policy which limits or restricts the extent to which the Registrant may borrow money and state the purpose for which the proceeds will be used.

(4) The underwriting of securities of other issuers. Include any fundamental policy with respect to the acquisition of restricted securities (i.e., securities that must be registered under the 1933 Act before they may be offered or sold to the public).

(5) The concentration of investments in a particular industry or group of industries.

(6) The purchase or sale of real estate and real estate mortgage loans.

(7) Purchase or sale of commodities or commodity contracts including futures contracts.

(8) The making of loans. For purposes of this Item the term "loans" shall not include the purchase of a portion of an issue of publicly distributed bonds, debentures or other securities, whether or not the purchase was made upon the original issuance of the securities. However, the term "loan" includes the fundamental policy which permits the loaning of cash or portfolio securities to any person.

(9) Any policy not recited above with respect to matters which the Registrant deems matters of fundamental policy.

Instructions

1. For purposes of this Item, the term "fundamental policy" is defined as any policy which the Registrant has deemed to be fundamental or any policy which may not be changed without the approval of a majority of the Registrant's outstanding voting securities.

2. The Registrant may reserve freedom of action with respect to any of the foregoing activities, but in such case, shall express definitely, in terms of a reasonable percentage of assets to be devoted to the particular activity or otherwise the maximum extent to which the Registrant intends to engage therein. For purposes of (7) above, attention is directed to the Commodity Exchange Act [7 U.S.C. 1 *et seq.*].

(c) To the extent that the prospectus does not do so, describe fully any significant investment policies of the Registrant which are not deemed fundamental and which may be changed without shareholder approval (for example, investing for control of management, investing in foreign securities or arbitrage activities).

Instruction

In responding to this Item the Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in such policies.

(d) *Portfolio Turnover:* Explain any significant variation in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant for any reason anticipates a significant variation in the portfolio turnover rate from that reported for its most recent fiscal year in Item 3(a)(12), so state. In the case of a new registration, the Registrant should state its policy with respect to portfolio turnover.

Item 14. *Management of the Fund*

(a) Furnish the information required by the following table as to each

director and officer of the Registrant, and if Registrant has an advisory board, as to each member of such board. Also state the nature of any family relationship between persons listed.

(1) Name and address.	(2) Position(s) held with registrant.	(3) Principal occupation(s) during past 5 years

Instructions

1. For purposes of this Item, the term "officer" means the president, vice-president, secretary, treasurer, controller and any other officers who perform policy-making functions for the Registrant. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

2. The principal business of any corporation or other organization listed under column (3) should be stated unless such principal business is implicit in its name.

3. If the Registrant has an executive or investment committee, the members should be identified and there should be a concise statement of the duties and functions of such committee.

4. Indicate the directors who are interested persons within the definition set forth in Section 2(a)(19) of the 1940 Act [15 U.S.C. 80a-2(a)(19)] by an asterisk.

(b) In the table required by paragraph (a) of this Item or in separate text following the table, describe any positions held with affiliated persons or principal underwriters of the Registrant by each individual listed in column (1) of the table.

(c) Furnish the information required by the following table as to each of the persons specified below who received from the Registrant and its subsidiaries during the Registrant's last fiscal year aggregate remuneration in excess of $60,000 for services in all capacities:

(i) each director, each of the three highest paid officers, and each advisory board member of the Registrant;

(ii) each affiliated person of the Registrant not included in subparagraph (i) except investment advisers;

(iii) each affiliated person of an affiliate or principal underwriter of the Registrant; and

(iv) all directors, officers and members of the advisory board of the Registrant as a group without naming them.

(1) Name of person.	(2) DCapacities in which remuneration received	(3) Aggregate remuneration	(4) Pension or retirement benefits accrued during registrant's last fiscal year.	(5) Estimated annual benefits upon retirement

Instructions

1. This item applies to any person who was a director, officer or member of the advisory board of the Registrant at any time during the last fiscal year. The information is to be given on an accrual basis if practicable.

2. If the Registrant has not completed its first full fiscal year since its organization, the information shall be given for the current fiscal year, estimating furture payments that would be made pursuant to an existing agreement or understanding.

3. Columns (4) and (5) should be answered only for those persons named in response to paragraph (a) of this item and should include all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant or any of its subsidiaries to each such person.

4. Column (4) need not be answered with respect to payments computed on an actuarial basis pursuant to any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

5. The information called for by Column (5) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

6. In the case of any plan (other than those specified in instruction (3) where the amount set aside each year depends upon the amount of earnings of the issuer or its subsidiaries for such year or a prior year, or where it is othewise impracticable to state the estimated annual benefits upon retirement, there shall be set forth, in lieu of the information called for by column (5), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

Item 15. *Control Persons and Principal Holders of Securities*

Furnish the following information as of a specified date no more than 30 days prior to the date of filing of the instant registration statement or amendment thereto.

(a) State the name and address of each person who controls the Registrant and explain the effect of such control on the voting rights of other security holders. As to each such control person, state the percentage of the Registrant's voting securities owned or any other basis of control. If such control person is a company, give the state or other sovereign power under the laws of which it is organized. List all parents of such control person.

Instruction

For purposes of this Item, "control" shall mean (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (ii) the acknowledgement or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under Section 2(a)(9) of the 1940 Act [15 U.S.C. 80a-2(a)(9)], which has become final, that control exists.

(b) State the name, address and percentage of ownership of each person who owns of record or is known by the Registrant to own of record or beneficially 5 percent or more of any class of the Registrant's outstanding equity securities.

Instructions

1. The percentages are to be calculated on the basis of the amount of securities outstanding.

2. If securities are being registered in connection with or pursuant to a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the status to exist upon consummation of the plan on the basis of present holdings and commitments.

3. If to the knowledge of the Registrant or any principal underwriter of its securities, 5 percent or more of any class of voting securities of the Registrant are or will be held subject to any voting trust or other similar agreement, this fact should be disclosed

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and show the respective percentage owned in each manner.

(c) Show all equity securities of the Registrant owned by all officers, directors and members of the advisory board of the Registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than 1 percent of the class, a statement to that effect is sufficient.

Item 16. *Investment Advisory and Other Services*

(a) Furnish the following information with respect to each investment adviser:

(i) The names of all controlling persons of the investment adviser and the basis of such control; and if material, the business history of any organization that controls the adviser;

(ii) The name of any affiliated person of the Registrant who is also an affiliated person of the investment adviser and a list of all capacities in which such person named is affiliated with the Registrant and with the investment adviser; and

Instruction

If an affiliated person of the Registrant either alone or together with others is a controlling person of the investment adviser, Registrant must disclose such fact but need not supply the specific amount or percentage of the outstanding voting securities of the investment adviser which is owned by such a controlling person.

(iii) The method of computing the advisory fee payable by the Registrant including:

(A) the total dollar amounts paid to the adviser by the Registrant under the investment advisory contract for the last three fiscal years;

(B) if applicable, any credits which reduced the advisory fee for any of the last three fiscal years; and

(C) any expense limitation provision.

Instructions

1. If the advisory fee payable by the Registrant varies depending on the Registrant's investment performance in relation to some standard, such standard must be set forth along with a fee schedule in tabular form. Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages which could be earned under the contract.

2. Each type of credit or offset should be stated separately in response to this Item.

3. Where a Registrant is subject to more than one expense limitation provision, only the most restrictive of such provisions must be described.

4. If Registrant has more than a single class of capital stock or is otherwise organized as a "series" investment company the response to paragraph (a)(3) of this Item should describe the methods of allocation and payment of advisory fees for each class or series.

(b) Furnish a description of all services performed for or on behalf of the Registrant, which services are supplied or paid for wholly or in substantial part by the investment adviser in connection with the investment advisory contract.

(c) Furnish a description of all fees, expenses and costs of the Registrant which are to be paid by persons other than the investment adviser or the Registrant, and identify such persons.

(d) Furnish a summary of the substantive provisions of any management-related service contract not otherwise disclosed in connection with an item of the Form which may be of interest to a purchaser of securities of the Registrant, under which services are provided to the Registrant, indicating the parties to the contract, the total dollars paid and by whom, for the past three years.

Instructions

1. The term "management-related service contract" includes any agreement whereby another person contracts with the Registrant to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include the following: (1) any contract with the Registrant to provide investment advice; (ii) any agreement whereby another person contracts with the Registrant to perform as custodian, transfer agent or dividend-paying agent for the Registrant, and (iii) bona fide contracts with the Registrant for outside legal or auditing services, or bone fide contracts for personal employment entered into with the Registrant in the ordinary course of business.

2. No information need be given in response to this Item with respect to the service of mailing proxies or periodic reports to shareholders of the Registrant.

3. In summarizing the substantive provisions of a management-related service contract, include the following: the name of the person providing the service; the direct or indirect relationships, if any, of such person with the Registrant, its investment adviser or its principal underwriter; the nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) If any person (other than a bona fide director, officer, member of an advisory board, or emloyee of the Registrant, as such, or a person named as an investment adviser in response to paragraph (a) above), pursuant to any understanding, whether formal or informal, reguarly furnishes advice to the Registrant or to the investment adviser of the Registrant with respect to the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration, furnish the following information:

(i) The name of such person.

(ii) A description of the nature of the arrangement, and the advice or information furnished.

(iii) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in portfolio securities of the Registrant) paid for such advice or information, and a statement as to how such remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction

Information need not be included in response to this Item with respect to any of the following: (i) persons whose advice was furnished to the investment adviser or the Registrant solely through uniform publications distributed to subscribers thereto; (ii) persons who furnished the investment adviser or the Registrant with only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice to them or making recommendations to them regarding the purhase or sale of securities by the Registrant; (iii) a company which is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the 1940 Act [15 U.S.C. 80a–2(a)(20)(iii)] (iv) any person the character and amount of whose compensation for such service must be approved by a court; or (v) such other persons as the Commission has by rules and regulations or order determined not to be an "investment adviser" of an investment company.

(f) Furnish a summary of the material aspects of any plan pursuant to which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The summary should include, among other information,the following:

(i) The manner in which amounts paid by the Registrant under the plan during the last fiscal year were spent on:

(A) Advertising,

(B) Printing and mailing of prospectuses to other than current shareholders,

(C) Compensation to underwriters,

(D) Compensation to dealers,

(E) Compensation to sales personnel, and

(F) Other (specify);

(ii) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(A) any interested person of the Registrant; or

(B) any director of the Registrant who is not an interested person of the Registrant; and

(iii) The benefits, if any, to the Registrant resulting from the plan.

Instruction

In responding to this item the Registrant should take note of the requirements of Rule 12b–1 under the 1940 Act.

(g) If the portfolio securities of the Registrant are held by a person other than a commercial bank, trust company or depository registered with the Commission as custodian, state the nature of the business of each such person.

(h) Furnish the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services performed by each.

(i) If an affiliated person of the Registrant or an affiliated person of such an affiliated person acts as custodian, transfer agent or dividend-paying agent for the Registrant, furnish a description of the services performed by such person and the basis for remuneration.

Item 17. *Brokerage Allocation*

(a) Describe how transactions in portfolio securities are effected including a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. If during either of the two years preceding the Registrant's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Registrant differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).

(b)(i) State the aggregate dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker: (A) which is an affiliated person of the Registrant; (B) which is an affiliated person of such person; or (C) an affiliated person of which is an affiliated person of the Registrant, its investment adviser, or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be identified in this Item.

(ii) State for each broker identified in response to paragraph (b)(i) of this item:

(A) The percentage of Registrant's aggregate brokerage commissions paid to such broker during the most recent fiscal year; and

(B) The percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through such broker during the most recent fiscal year.

(iii) Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph (b)(i) of this Item, state the reasons for such difference.

(c) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in connection with these determinations.

Instructions

1. If the receipt of products or services other than brokerage or research services is a factor considered in the selection of brokers, this description should specify such products and services.

2. If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services.

3. State whether persons acting on behalf of Registrant are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, this description should explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts and that not all such services may be used by the investment adviser in connection with the Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers such policies and practices should be explained.

(d) If, during the last fiscal year, Registrant or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker because of research services provided, state the amount of such transactions and related commissions.

Item 18. *Capital Stock and Other Securities*

To the extent that the prospectus does not do so, provide the following information:

(a) With respect to each class of capital stock of the Registrant

(i) The title of each such class; and

(ii) A full discussion of the following provisions or characteristics of each class of capital stock, if applicable: (A) dividend rights; (B) voting rights; (C) liquidation rights; (D) pre-emptive rights; (E) conversion rights, (F) redemption provisions; (G) sinking fund provisions; and (H) liability to further calls or to assessment by the Registrant.

Instruction

1. If any class of securities described in response to this Item possesses cumulative voting rights, disclose the existence of such rights and explain the operation of cumulative voting.

2. If the rights evidenced by any class of securities described in response to paragraph (a) or (b) of this Item are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being described.

(b) If the Registrant has any authorized securities other than capital stock, describe the rights evidenced thereby. If the securities are subscription warrants or rights, state the title and amount of securities called for, the period during which and the prices at which the warrants or rights are exercisable.

Item 19. *Purchase, Redemption and Pricing of Securities Being Offered*

(a) Provide a description of the manner in which registrant's securities are offered to the public. The description should include any special purchase plans or methods not described in the prospectus, such as letters of intent, accumulation plans, withdrawal plans, exchange privileges and services in connection with retirement plans.

(b) Describe the method followed or to be followed by the Registrant in determining the total offering price at which its securities may be offered to the public and the method or methods used to value the Registrant's assets.

Instructions:

1. The valuation procedure used by the Registrant in determining net asset value and public offering price must be described.

2. The response should state how the excess of offering price over the net amount invested is distributed among the Registrant's principal underwriters or others and the basis for determining the total offering price.

3. To the extent this information is not included in the prospectus, state the time (or times) each day when the net asset value is calculated for the purpose of pricing shares.

4. Explain fully any difference in the price at which securities are offered to the public, as individuals and as groups, and to officers, directors or employees of the Registrant, its adviser or underwriter.

5. Furnish a specimen price-make-up sheet showing the computation of the total offering price per unit and using as a basis the value of the Registrant's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Registrant.

6. If the Registrant uses either the penny-rounding pricing or the amortized cost valuation methods to calculate its price per share, pursuant to either an order of exemption from the Commission or Rule 2a-7 under the 1940 Act [17 CFR 270.2a-7], the response to paragraph (a)(1) of this item should describe the nature, extent and effect of the exemption.

(c) If the Registrant has received an order of exemption from Section 18(f) of the 1940 Act [15 U.S.C. 80a-18(f)] from the Commission or has filed a notice of election pursuant to Rule 18f-1 [17 CFR 270.18f-1] under the Act which has not been withdrawn, the nature, extent and effect of the exemptive relief should be fully described in the Statement of Additional Information to the extent such information has not been provided by the Registrant, at its discretion, in the prospectus.

(d) If, pursuant to Rule 22d-2 under the 1940 Act [17 CFR 270.22d-2], the Registrant provides reinvestment privileges for persons who redeem, describe in the Statement of Additional Information the terms and procedures

for exercising such privileges, if not described, at the Registrant's discretion, in the prospectus.

Item 20. *Tax Status*

Set forth any information about Registrant's tax status that is not required to be in the prospectus but that Registrant believes is of interest to investors including, but not limited to, an explanation of the legal basis for the Registrant's tax status. If the Registrant is qualified or intends to qualify under Subchapter M of the Internal Revenue Code [26 U.S.C. 851–856] and has not disclosed that fact in the prospectus, then disclosure of that fact will be sufficient. The Registrant should also disclose any special or unusual tax aspects of the Registrant, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which Registrant may be entitled.

Instruction:

If Registrant has more than a single class of capital stock or is otherwise organized as a "series" investment company, having more than one portfolio, any special tax consequences resulting therefrom should be described in response to this Item.

Item 21. *Underwriters*

(a) With respect to the public distribution of securities of the Registrant, state:

(i) for each principal underwriter distributing securities of the Registrant, the nature of the obligation to distribute the Registrant's securities;

(ii) whether the offering is continuous; and

(iii) the aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the last three fiscal years.

(b) Furnish the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Registrant or an affiliated person of such an affiliated person, directly or indirectly from the Registrant during the Registrant's last fiscal year:

(1) Name of Principal Underwriter; (2) Net Underwriting Discounts and Commissions; (3) Compensation on Redemption and Repurchases; (4) Brokerage Commissions; and (5) Other Compensation.

Instruction:

Indicate in a note, or otherwise, the nature of the services rendered in consideration of the compensation set forth under column (5). Include under this column any compensation received by an underwriter for keeping the Registrant's securities outstanding in the hands of the public.

(c) If during the Registrant's last fiscal year any payments were made by the Registrant to an underwriter or dealer in the Registrant's shares other than: (i) payments made through deduction from the offering price at the time of sale of securities issued by the Registrant, (ii) payments representing the purchase price of portfolio securities acquired by the Registrant, (iii) commissions on any purchase or sale of portfolio securities by the Registrant, or (iv) payments for investment advisory services pursuant to an investment advisory contract, furnish the following information:

(A) the name and address of the underwriter or dealer;

(B) a description of the circumstances surrounding payments;

(C) the amount paid;

(D) the basis on which the amount of the payment was determined and the consideration received for it.

Instructions:

1. Do not include in answer to this Item any information furnished in answers to Items 7(e) or 21(b) above. Do not include any payment for a service excluded by Instructions 1 and 2 to Item 7(c) above or by Instruction 2 to Item 31 of Part C of this Form.

2. If the payments were made pursuant to an arrangement or policy applicable to dealers generally, it will be sufficient to describe such arrangement or policy.

Item 22. *Calculations of Yield Quotations of Money Market Funds*

For a Registrant which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, furnish a description of the method by which the yield quotation provided in the prospectus pursuant to Item 3(c) is computed.

Instructions:

1. For purposes of the description of the method by which the yield quotation required in the prospectus is computed the determination of net change in account value must reflect:

(i) the value of additional shares purchased with dividends from the original share, and dividends declared on both the original share and any such additional shares; and

(ii) all fees that are charged to all shareholder accounts, in proportion to the length of the base period and the fund's average account size.

2. The capital changes to be excluded from the calculation of yield required by this Item are realized gains and losses from the sale of securities and unrealized appreciation and depreciation.

Item 23. *Financial Statements*

Instructions:

1. Part B of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S–X [17 CFR 210]. The specimen price-make-up sheet required by Item 19(b) of this Form may be furnished as a continuation of the balance sheet specified by Regulation S–X.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S–X may be omitted from part B of the Registration Statement and included in Part C of such Registration Statement:

(i) the statements of any subsidiary which is not a majority-owned subsidiary; and

(ii) the following schedules in support of the most recent balance sheet (a) columns C and D of Schedule III [17 CFR 210.12–03]; and (b) Schedule VI [17 CFR 210.12–04].

3. In addition to the requirements of Rule 3–18 of Regulation S–X [17 CFR 210.3–18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the Registration Statement as of a date within 90 days prior to the date of filing.

4. Every annual report to shareholders required pursuant to Section 30(d) of the 1940 Act and Rule 30d–1 thereunder [17 CFR 270.30d–1] shall contain the following information:

(i) the audited financial statements required by Regulation S–X, as modified by Instruction 2 above, for the periods specified by Regulation S–X;

(ii) the condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(iii) unless shown elsewhere in the report as part of the financial statements required by (i) above, the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all offices; and (D) to each person of whom any officer or director of the company is an affiliated person.

5. Every report to shareholders required by Section 30(d) of the 1940 Act and Rule 30d–1 thereunder [17 CFR 270.30d–1], except the annual report, shall contain the following information (which need not be audited).

(i) the financial statements required by Regulation S–X, as modified by Instruction 2 above, for the period commencing either with (A) the beginning of the company's fiscal year (or date of organization, if newly organized) or (B) a date not later than the date after the close of period included in the last report conforming with the requirements

of Rule 30d–1 and the most recent preceding fiscal year;

(ii) the condensed financial information required by Item 3(a) of this Form, for the period of the report as specified by (1) above, and the most recent preceding fiscal year; and

(iii) unless shown elsewhere in the report as part of the financial statements required by (i) above, the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person.

6. Reference is made to General Instruction E regarding incorporation by reference.

Part C. Other Information

Item 24. *Financial Statements and Exhibits*

List all financial statements and exhibits filed as part of the Registration Statement.

(a) Financial statements:

Instruction:

Designate those financial statements included in Parts A and B of the Registration Statement.

(b) Exhibits:

(1) copies of the charter as now in effect;

(2) copies of the existing bylaws or instruments corresponding thereto;

(3) copies of any voting trust agreement with respect to more than 5 percent of any class of equity securities of the Registrant;

(4) specimens or copies of each security issued by the Registrant, including copies of all constituent instruments, defining the rights of the holders of such securities, and copies of each security being registered;

(5) copies of all investment advisory contracts relating to the management of the assets of the Registrants;

(6) copies of each underwriting or distribution contract between the Registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(7) copies of all bonus, profit sharing, pension or other similar contracts or arrangements wholly or partly for the benefit of directors or offices of the Registrant in their capacity as such; any such plan that is not set forth in a formal document, furnish a reasonably detailed description thereof.

(8) copies of all custodian agreements and depository contracts under Section 17(f) of the 1940 Act [15 U.S.C. 80a–17(f)], with respect to securities and similar investments of the Registrant, including the schedule of remuneration;

(9) copies of all other material contracts not made in the ordinary course of business which are to be performed in whole or in part at or after the date of filing the Registration Statement;

(10) an opinion and consent of counsel as to the legality of the securities being registered, indicating whether they will when sold be legally issued, fully paid and non-assessable;

(11) copies of any other opinions, appraisals or rulings, and consents to the use thereof relied on in the preparation of this Registration Statement and required by Section 7 of the 1933 Act [15 U.S.C. 77g];

(12) all financial statements omitted from Item 23;

(13) copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the underwriter, adviser, promoter or initial stockholders and written assurances from promoters or initial stockholders that their purchases were made for investment purposes without any present intention of redeeming or reselling;

(14) copies of the model plan used in the establishment of any retirement plan in conjunction with which Registrant offers its securities, any instructions thereto and any other documents making up the model plan. Such form(s) should disclose the costs and fees charged in connection therewith.

(15) copies of any plan entered into by Registrant pursuant to Rule 12b–1 under the 1940 Act, which describes all material aspects of the financing of distribution of Registrant's shares, and any agreements with any person relating to implementation of such plan.

Instruction:

Subject to the Rules regarding incorporation by reference, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 10–12 above are required to be filed only as part of a 1933 Act Registration Statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits required above.

Item 25. *Persons Controlled by or Under Common Control with Registrant*

Furnish a list or diagram of all persons directly or indirectly controlled by or under common control with the Registrant and as to each such person indicate (1) if a company, the state or other sovereign power under the laws of which it is organized, and (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it.

Instructions:

1. The list or diagram shall include the Registrant and shall be so prepared as to show clearly the relationship of each company named to the Registrant and to the other companies named. If the company is controlled by means of the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Designate by appropriate symbols (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in the respective consolidated financial statements; (iii) subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; (iv) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed.

Item 26. *Number of Holders of Securities*

State in substantially the tabular form indicated, as of a specified date within 90 days prior to the date of filing, the number of record holders of each class of securities of the Registrant.

Title of class	Number of record holders
(1)	(2)

Item 27. *Indemnification*

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any director, officer, affiliated person or underwriter for their own protection.

Instruction:

In responding to this Item the Registrant should take note of the requirements of Rules 461 [17 CFR 230.461] and 484 [17 CFR 230.484] under the 1933 Act and Section 17 of the 1940 Act [15 U.S.C. 80a–17].

Item 28. *Business and Other Connections of Investment Adviser*

Describe any other business, profession, vocation or employment of a substantial nature in which each investment adviser of the Registrant, and each director, officer or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his own account or in the capacity of director, officer, employee, partner or trustee.

Instructions:

1. State the name and principal business address of any company with which any person specified above is connected in the capacity of director, officer, employee, partner or trustee, and the nature of such connection.

2. The names of investment advisory clients need not be given in answering this item.

Item 29. *Principal Underwriters*

(a) Furnish the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing securities of the Registrant also acts as a principal underwriter, depositor or investment adviser.

(b) Furnish the information required by the following table with respect to each director, officer or partner of each principal underwriter named in the answer to Item 21:

Name and principal business address	Positions and offices with underwriter	Positions and offices with registrant
(1)	(2)	(3)

(c) Furnish the information required by the following table with respect to all commissions and other compensation received by each principal underwriter who is *not* an affiliated person of the Registrant or an affiliated person of such an affiliated person, directly or indirectly, from the Registrant during the Registrant's last fiscal year:

Name of principal underwriter	Net underwriting discounts and commissions	Compensation on redemption and repurchase	Brokerage commissions	Other compensation
(1)	(2)	(3)	(4)	(5)

Instructions:

1. Indicate in a note, or otherwise, the nature of the services rendered in consideration of the compensation set forth under column (5). Include under this column any compensation received by an underwriter for keeping the Registrant's securities in the hands of the public.

2. Instruction 1 to Item 21(c) shall also apply here.

Item 30. *Location of Accounts and Records*

With respect to each account, book or other document required to be maintained by Section 31(a) of the 1940 Act [15 U.S.C. 80a-30(a)] and the Rules [17 CFR 270.31a-1 to 31a-3] promulgated thereunder, furnish the name and address of each person maintaining physical possession of each such account, book or other document.

Item 31. *Management Services*

Furnish a summary of the substantive provisions of any management-related service contract not discussed in Part A or Part B of this Form (because the contract was not believed to be of interest to a purchaser of securities of the Registrant) under which services are provided to the Registrant, indicating the parties to the contract, the total dollars paid and by whom, for the last three fiscal years.

Instructions:

1. The instructions to Item 16 of this Form shall also apply to this Item.

2. No information need be given in response to this Item with respect to any service for which aggregate payments of less than $5,000 were made during each of the last three fiscal years.

Item 32. *Undertakings*

Furnish the following undertakings in substantially the following form in all initial Registration Statements filed under the 1933 Act:

(a) an undertaking to file an amendment to the Registration Statement with certified financial statements showing the initial capital received before accepting subscriptions from any persons in excess of 25 if Registrant proposes to raise its initial capital pursuant to Section 14(a)(3) of the 1940 Act [15 U.S.C. 80a-14(a)(3)];

(b) an undertaking to file a post-effective amendment, using financial statements which need not be certified, within four to six months from the effective date of Registrant's 1933 Act Registration Statement.

Instructions:

1. Such amendment may be filed earlier only if at least one-half the dollar amount of securities registered has been raised from a public offering and has been substantially invested pursuant to Registrant's investment objectives.

2. The financial statements included in such post-effective amendment should be as of and for the time period reasonably close or as soon as practicable to the date of the amendment.

Signatures

Pursuant to the requirements of (the Securities Act of 1933 and) the Investment Company Act of 1940 the Registrant (certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to Rule 485(b) under the Securities Act of 1933 and) has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereto duly authorized, in the City of , and State of on the day of , 19 .

Registrant
By (Signature and Title

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the date indicated.

(Signature)
(Title)
(Date)

Instructions As To Summary Prospectuses

The summary prospectus to be used pursuant to Rule 431 (§ 230.431 of this chapter) for companies whose securities are registered on Form N-1A shall be available only if (1) a registration statement relating to these securities has been filed, (2) the response to Items 12(a) and 12(b) is "Not Applicable," and (3) if at such time Registrant intends to meet the requirements of Subchapter M, Sections 851-855 of the Internal Revenue Code, during the current taxable year. No sales literature may be used unless preceded or accompanied by the full statutory prospectus. The summary prospectus shall at the time of its use contain such of the information specified below as is then included in the Registration Statement. All other information and documents contained in the Registration Statement may be omitted.

(a) A synopsis that is a clear and concise description of the salient features of the offering and the Registrant. The information provided in the synopsis need not be set forth in the order or the manner described herein. Further, the information may be presented in a question-and-answer format.

The synopsis must include: (i) a brief description of how the Registrant proposes to achieve its investment objectives, including identification of the types of securities in which the Registrant proposes to invest primarily and a statement as to whether the Registrant proposes to operate as a diversified or non-diversified investment company; (ii) a summary of the principal speculative or risk factors associated with investment in the Registrant, including factors peculiar to the Registrant as well as those generally attendant to investment in an investment company with objectives and policies similar to Registrant's; (iii) a statement of the total expenses

incurred by the Registrant in the previous fiscal year as a percentage of net assets and a statement of any direct charges made by the Registrant to shareholder accounts during such fiscal year, if the Registrant has had an operating history of at least one full fiscal year. If the Registrant does not have an operating history of one full fiscal year, the Registrant must include the maximum investment advisory or other asset based fee that may be charged and a list of the other significant types of expenses the Registrant expects to incur, including any direct charges to shareholder accounts; and (iv) the nature of the securities being offered.

The synopsis must also: (i) provide the name of the investment adviser, and, if any other person provides services of the type customarily provided by an investment adviser, the identity of such person and the services so provided; (ii) provide a cross-reference to the description in the prospectus of how to purchase the securities being offered; and (iii) provide a cross-reference to the description in the prospectus of how a shareholder may effect redemption and, if applicable, a repurchase transaction.

Finally, the synopsis may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of the information required to be presented in the summary prospectus.

(b) The information called for by Item 3 shall be set forth not further back in the summary prospectus than the third page thereof and shall not be preceded by any other chart or table.

(c) The information in Item 4(a)(ii) and 4(b) must be contained herein.

(d) The summary prospectus must contain the legends required by Rules 481(b)(1) and 431(e) under the Securities Act of 1933, and the following legend should be placed on the cover page:

All Interested Persons Should Send for and Examine the Full Prospectus Before Purchasing Shares of the Fund

Instructions:

1. If Registrant chooses to present the information required by Items 3(c) and 22 of the Form, it must be set forth in complete and uncondensed form, except insofar as Item 3(a) constitutes such a condensation.

2. The Commission may, upon the request of the Registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the inclusion of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for the protection of investors.

[Note: This Appendix will not appear in the CFR.]

Appendix B

The Commission received numerous comments concerning the Guidelines published with the release proposing Form N–1A. The following is a brief synopsis of the Guidelines about which comments were received, a summary of comments received concerning each guide, and the response of the Division of Investment Management (the "staff") to these comments.

Guide 1. Name of Registrant

Guide 1, as proposed, summarized the staff's position regarding a fund's use of a name or title which may be deceptive or misleading, pursuant to section 35(d) of the 1940 Act [15 U.S.C. 80a-34(d)]. The guide, as proposed, also articulated the longstanding staff position that, if a fund's name implies that it invests primarily in a particular security or type of security, that fund must, under normal circumstances, have 80% of its assets invested in that security or type of security. Three commentators argued that, if a fund holds itself out as primarily invested in a particular type of security or industry, the percentage of assets invested in that particular type of security or industry need only be 50% of gross assets. One of these commentators also argued that the percentage figure should be based on net assets only, not total assets.

The staff has considered these comments, and has concluded that (except in the case of money market and tax-exempt funds for which the 80% standard should be retained) the present percentage figure is too high in light of the need of funds to respond flexibly to changing circumstances. However, the staff believes that, when a fund's name implies a certain type of investment policy, investors should be entitled to expect substantially more than half of the fund's assets to be invested consistently with that policy. In light of the foregoing considerations, Guide 1, as published, provides that a fund's name may imply that the fund is primarily invested in a particular security or type of security if, under normal circumstances, 65% of its total assets are invested in that particular security or type of security.

Another commentator suggested that the percentage of assets should be exclusive of cash, government securities and short-term money market instruments. Although Guide 1 to Form N–8B–1 (Investment Company Release No. 7221), one of the predecessor forms to the present Form N–1, permitted the 80% test to be exclusive of cash, government securities and short-term money market instruments, at that time there were few, if any, money market or government securities funds. In view of the emergence of these types of funds, the staff does not believe that such a condition is now appropriate. Nevertheless, the staff believes that the intent of that original guide is encompassed within the phrase "under normal circumstances" in the present guide.

Finally, a commentator from the securities bar suggested that enforcement of section 35(d) of the 1940 Act, which prohibits the use of deceptive or misleading names by investment companies, should be handled on a case-by-case basis unless the percentage of gross assets criterion is embodied in a regulation by the Commission. The staff believes that a specific standard is appropriate in a guideline but not in a rule. The purpose of these guidelines is to assist registrants by providing general standards concerning issues which frequently arise, while preserving the flexibility to resolve specific issues concerning possibly deceptive or misleading names on a case by case basis. The provision of Guide 1 concerning section 35(d) will be published with appropriate modifications as discussed herein.

Guide 3. Investment Objectives and Policies

Guide 3, as proposed, discussed the general disclosure requirements of Items 4 and 13 (formerly Item 4 of proposed Part B) of Form N–1A pertaining to the presentation of information concerning the types of investments and limitations on investments made by the fund. The last paragraph of the guide concerns the disclosure that the staff has suggested should be included in the Statement of Additional Information regarding investment activities that the fund's charter or by-laws permit, but for which the fund has no specific policy. One commentator suggested that this part of the guide appeared to contemplate that, in practice, fund charters and by-laws actually deal specifically with the types of investment activities in which the fund might engage. The commentator asserted that in its experience this is not the case, but rather that investment company charters and by-laws are typically drafted in a very broad and all inclusive manner, so that they permit almost any type of investment activity. That commentator asserted that in such

a case attempts to deal with the provisions of the guide would require a "hopelessly confused and useless discussion." The staff agrees with this comment and has revised the guide accordingly.

Guide 4. Special Considerations Relating to Suitability [1]

Guide 4, as proposed, suggested that certain funds whose sucurities are made available through a bank or broker-dealer that provides cash management services should make certain disclosures concerning the limited suitability of such an investment, if the investor does not intend to use the cash management services available. There were five comments concerning this guide, none of which were in favor of the requested disclosure. One commentator asserted that registrants should have to disclose only that the fund may not be a suitable investment if the investor does not intend to use the cash management services available through the fund and that it should not be necessary, as the guide indicates, to state that other funds may be more suitable investments. Another commentator argued that other factors such as yield, total management fees, safety, minimum required investment and redemption privileges may affect an investor's decision. Further, a third commentator argued that to the extent that providing cash management services increases expenses and reduces yield, that information "is readily available and obvious to shareholders without special disclosure." Another commentator suggested that it should be necessary to provide information concerning the suitability of investing in a fund offering cash management services only if the cash management fee or charge is subtracted from the fund's assets. That commentator further asserted that no such disclosure should be required where the fee is deducted from the customer's account since in that situation the fund's yield is not affected. Finally, a commentator from the securities bar argued that it is the responsibility of brokers recommending investments to their clients and not of mutual funds to recommend suitable investments to potential investors. Registrants, in that commentator's opinion, have no duty to contrast their features and merits with competing products. In light of the suitability requirements applicable to broker-dealers, the staff believes it is not necessary for funds to provide disclosure concerning the suitability of investing in a fund offering cash management services. The staff has withdrawn Guide 4 to reflect this change in position.

Guide 5. Portfolio Turnover

Guide 5 (formerly Guide 6, as proposed) concerned disclosure of the fund's portfolio turnover rate and, where applicable, significant tax or brokerage consequences which might result from that turnover rate. One commentator suggested that the word "identified" should be substituted in this guide for the word "discussed." That commentator asserted that otherwise the guide would appear to require excessive disclosure in the prospectus of the consequences of portfolio turnover, which information should more properly be in the Statement of Additional Information. The staff agrees with the commentator that there should generally not be lengthy disclosure of this information in the prospectus but believes that the term "identify" does not really fit in this particular situation. Therefore, the staff has modified the guide to provide instead for a "brief" discussion of the consequences of the fund's portfolio turnover rate in the fund's prospectus.

Another commentator expressed concern that the guide's request that funds estimate their maximum portfolio turnover rates presents difficulties for funds. It is the commentator's belief that it is generally impossible for funds to predict accurately their maximum portfolio turnover rates and that a request for such information leads to predictions which are very high and may unrealistically reflect the expected operation of the fund. The stafff disagrees with this comment and believes that where historical information is not available, it is reasonable to expect a fund to predict its maximum turnover rate based on its concept of the consequences of the implementation of its investment policies. (This figure will of course be an estimate and not an absolute limit.) This portion of Guide 5 will be published as proposed.

Finally, one commentator suggested that a discussion of the tax consequences and the amount of brokerage commissions relating to the fund's portfolio turnover rate should not be included in the prospectus in every case, but only where they are significant. That commentator cited money market funds as an example of investment companies which generally would not need to discuss such consequences. That commentator also recommended that any extended discussion of the tax or brokerage consequences of a high portfolio turnover rate should be provided in Part B. It appears to the staff that the guide as proposed is consistent with this comment.

Guide 12. Purchase and Sale of Real Estate

Guide 12 (formerly Guide 13, as proposed) suggested certain disclosure for funds investing in real estate. The guide included in its definition of real estate the securities of companies whose assets consist substantially of real estate and interests in real estate. With regard to the staff's definition of real estate, two commentators argued that this guide is inaccurate because, in the commentators' opinions, investing in *marketable* securities of companies that invest primarily in real estate is not considered investing in interests in real estate. One of the commentators suggested that the guide should be revised. The staff agrees and has revised the guide to reflect that where funds invest in securities of entities that invest primarily in real estate, and those securities have a ready market, then those securities need not be treated as investments in real estate.

Guide 14. Other Policies Which Are Changeable Only if Authorized by Shareholder Vote or Which the Registrant Deems a Matter of Fundamental Policy

Guide 14 (formerly Guide 15, as proposed) delineated the appropriate levels of prospectus disclosure with respect to investment policies which are changeable only if authorized by shareholder vote or which the registrant elects to treat as "fundamental." One commentator suggested that although he agreed that negative investment policies need not be included in the prospectus, he believed that the guide should clarify that such negative investment policies *may* be disclosed in the prospectus at the option of the registrant. The General Instructions to Form N-1A make it clear that registrants may include more information in the prospectus than is required, provided that such information is not incomplete, inaccurate, or misleading, and does not, by virtue of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Accordingly, registrants may include disclosure as to negative investment policies in the prospectus if they deem doing so to be appropriate, although disclosure as to such policies would not normally appear to be of fundamental importance.

[1] This guide has been withdrawn by the staff. Current Guide 4 is entitled: *Type of Securities.*

Guide 15. Qualification for Treatment Under Subchapter M of the Internal Revenue Code

Guide 15 (formerly Guide 16, as proposed) [3] suggested that a nondiversified company intending to qualify under Subchapter M of the Internal Revenue Code should disclose in the Statement of Additional Information the percentage of assets which may be invested in any one issuer and the percentage of the outstanding voting securities of any one issuer which the company may acquire. Concerning this requested disclosure, one commentator suggested that, if a fund intends to qualify under Subchapter M, the registrant need only disclose that fact without describing the requirements of Subchapter M. As discussed in the release concerning Item 13 of Form N–1A, the Commission believes this disclosure would suffice. The staff has revised the guide accordingly.

Guide 18. Diversification [3]

Guide 18 (formerly Guide 19, as proposed) stated that, for purposes of determining whether an issuer has met the 1940 Act's diversification requirements, certificates of deposit should be treated as securities. One commentator asserted that certificates of deposit should not be treated as securities. One commentator asserted that certificates of deposit should not be treated as securities, but rather should be treated as cash items consistent with Regulation S–X and the Internal Revenue Service's position concerning Subchapter M. That commentator further asserted that the Guidelines are not the appropriate vehicle in which to resolve the issue of whether a certificate of deposit should be treated as a security or a cash item for purposes of diversification. After considering this comment, the staff has determined to withdraw this proposed guideline for further consideration. The staff may, however, publish a revised version of this guide at some later date.

Guide 19. Concentration of Investments in Particular Industries

Guide 19 (formerly Guide 21, as proposed) suggested that, if the registrant intends to concentrate its investments in a particular industry, it should specify the industry or group of industries in which it will concentrate. This guide further noted that the staff will rely on the *Directory of Companies Filing Annual Reports With the SEC* (the "Directory") in determining industry classifications. In addition, the guide stated that a registrant having a policy of concentration may select its own industry classifications, but such classifications should not be so broad that the primary economic characteristics of the companies in a single class are materially different. One commentator suggested that a registrant that has a policy of *not* concentrating also should be free to select its own industry classification, so long as the primary economic characteristics of the companies in the particular industry classifications selected by the registrant are not materially different. It appears very unlikely, given the particularity of the industry classifications used in the Directory that any registrant electing to have a policy of non-concentration would be disadvantaged by their use. However, the guide does not limit the freedom to select classifications to only those registrants having policies to concentrate, and the staff has revised the guide to clarify this point.

Another commentator asserted that, since the staff relies exclusively on the Directory, a registrant has no choice but to follow the classifications in the Directory, even though the guide appears to give the registrant a choice. That commentator recommended that the guide be revised to state that registrants may wish to use the Directory for guidance, but are not bound by it. The staff does not take the position that a registrant *must* use the Directory when determining a particular industrial classification, and, as the commentator noted, the staff framed the guide to indicate the choice available to the registrant. However, the guide has been modified to reduce the likelihood of the misunderstanding reflected by this comment.

The guide, as proposed, stated that money market funds may declare an investment policy on industry concentration reserving freedom of action to concentrate their investments in government securities and certain bank instruments issued by domestic banks. The guide noted, however, that foreign branches of domestic banks are not registered in the United States are not considered "domestic banks." Three commentators disagreed with the position that money market funds may not reserve freedom of action to concentrate their investments in instruments issued by foreign branches of domestic banks. These commentators argued that foreign subsidiaries of domestic banks should be treated the same as domestic banks and that money market funds should be permitted to reserve freedom of action to concentrate their investments in instruments issued by foreign subsidiaries, if, as one commentator suggested, the domestic parent of the subsidiary is liable for the instruments issued by its foreign branches.

After considering the comments, the staff is of the opinion that, if a registrant could disclose that the investment risk associated with investing in instruments issued by the foreign subsidiary of a domestic bank is the same as that of investing in instruments issued by the domestic parent in that the domestic parent would be liable, unconditionally, in the event that the foreign branch failed to pay on its instruments for any reason, then the registrant may treat the foreign branch as a domestic bank for purposes of concentration. Otherwise, the registrant may not reserve freedom of action to concentrate its investments in instruments issued by foreign branches of domestic banks. The guide has been revised to reflect this position.

Guide 20. Investment Companies Investing in Other Than High-Grade Bonds

Guide 20 (formerly 22, as proposed) [4] suggested that if the registrant invests in lower-rated bonds, then it should concisely but clearly disclose in the prospectus the risks involved in such investments. One commentator argued that the definition of lower-rated bonds provided in a footnote to the guide was incorrect because it included bonds rated BBB or Baa, which are medium grade obligations that fall within the category of investment grade securities. The staff agrees with the commentator that BBB or Baa securities are investment grade securities. Nevertheless, the staff believes that investments in less than high-grade bonds involve certain recongnized risks and that disclosure in the registrant's prospectus of these risks would be of fundamental importance to investors. Therefore, the staff has revised the guide to provide that registrants seeking high income by investing in other than high-grade bonds should concisely disclose the risk's involved in such investments.

Guide 21. Disclosure of Risk Factors

Guide 21 (formerly Guide 23, as proposed) provided that, if the registrant intends to invest as much as 10% of its assets in foreign securities which are not publicly traded in the United States,

[3] The prior title of this guide was: *The Percentage of Assets Which May be Invested in the Securities of Any One Issuer.*

[3] This guide has been withdrawn by the staff. Current Guide 18 is entitled: *Municipal Bonds.*

[4] The prior title of this guide was: *Investment Companies Investing In Lower-Rated Bonds.*

such intention must be stated in the registrant's prospectus. One commentator suggested that for many foreign securities, there are dollar-denominated American Depository Receipts ("ADRs"), which are receipts issued against securities of foreign issuers deposited in an American depository. Such ADRs are traded in the United States on exchanges or over-the-counter, are issued by domestic banks, and do not involve the same currency risk as a foreign security. That commentator concluded that ADRs should not be considered foreign securities for purposes of the 10% test. Since ADRs, even if they were viewed as foreign securities, are publicly traded in the United States, the guide as proposed does not require the type of disclosure as to ADRs that would be required as to foreign securities not traded domestically. Nevertheless, the Guide has been clarified on this point.

Guide 22. Government Securities

Guide 22 (formerly Guide 24, as proposed) suggested that a registrant that invests to a significant extent in U.S. government securities should provide information concerning the types of government securities that it will invest in and the extent to which these securities are protected by the full faith and credit of the United States. Two commentators from the securities bar argued that the prospectus disclosure suggested by Guide 22 is excessive and runs counter to the concept of prospectus simplification. These commentators further argued that since most money market funds, from time to time, have varying amounts of their assets in U.S. goverment securities, most or all money market funds would feel the need to include this disclosure in their prospectuses. One of the commentators suggested that at a minimum this disclosure should be required only for "U.S. Government only" money market funds. The information called for by the guide can be disclosed concisely and, in fact, most funds that invest in U.S. Government securities discuss their policies in that regard relatively briefly in their current prospectus. Accordingly, the staff did not contemplate that this guide would result in lengthy prospectus disclosure concerning this subject, even in the case of funds that invest primarily in U.S. Government securities, and, of course, the level of disclosure that should be provided pursuant to this guide will directly depend on the level of investment by the fund in U.S. government securities (see Guide 3). The staff, however, has revised the language of this guide to clarify this position.

Guide 24. Management of the Fund

Guide 24 (formerly Guide 26, as proposed) suggested disclosure concerning Items 5 and 14 (formerly Item 5 of Part B, as proposed) of Form N–1A, including a discussion of management remuneration as required by Item 14. Concerning the disclosure of management remuneration discussed in Guide 25, one commentator suggested that the remuneration disclosure threshold of $40,000 should be changed to $60,000 in order to correspond with Item 404 of Regulation S–K [17 CFR 229.404]. As discussed in the release with regard to Item 14(d), the Commission has modified this Item to raise the threshold amount to $60,000. The staff has revised this guide accordingly.

Guide 25. Investment Advisory and Other Services

Guide 25 (formerly Guide 27, as proposed) concerned the disclosure of investment advisory services and fees. One commentator suggested that the prospectus should contain a brief description of the advisory fee, but that the prospectus should not contain disclosure of all the breakpoints in the adviser's fee, if the current fee is disclosed along with the high and low breakpoint limits. The staff agrees with this comment, but believes that such disclosure is all that is suggested by the guide. Another commentator suggested that certain material in Guide 25 and Guide 28, as proposed, is repetitious of material already in Form N–1A and should be deleted. Guide 25 has been revised and Guide 28, as proposed, has been withdrawn to eliminate redundancy.

Guide 26. Brokerage Allocation

Guide 26 (formerly Guide 29, as proposed) concerned disclosure of brokerage allocation practices. One commentator suggested that all disclosure regarding brokerage allocation practices should be moved to Part C of the Form. Another commentator suggested that no disclosure concerning allocation practices should be necessary if the registrant is not required to respond to Item 17. As discussed in the release, the Commission has decided not to move all discussion of brokerage allocation to Part C, since at least some investors may be interested in this information. However, the guide has been modified to clarify that no disclosure concerning brokerage allocation practices would be necessary if the registrant is not required to respond to Item 17 of the Form.

Guide 27. Redemption or Repurchase

Guide 27 (formerly Guide 30, as proposed) stated that Item 8 of the Form requires the registrant to include in the prospectus a brief description of the procedures for redeeming shares or having shares repurchased by the registrant. In addition, the guide provided that any charges or restrictions applying to such procedures should be disclosed in the prospectus. Concerning this suggested disclosure, one commentator stated that he believed that it was inappropriate to require funds to disclose fees or charges imposed by an entity other than the fund for redemption of the fund's shares. That commentator asserted that fees charged by a broker are its responsibility and should be disclosed by the brokers, not the fund. The commentator concluded that this suggested disclosure should be deleted from the guide.

The staff has considered these comments and believes that, when a distributor or principal underwriter charges a fee for repurchase or redemption services, such charges should be disclosed in the prospectus. In addition, the staff believes that the registrant should disclose in the prospectus the fact that, if a shareholder used the services of a broker for the repurchase or redemption of the registrant's securities, there also might be charges imposed for such services by the broker-dealer selected by the shareholder. Nevertheless, the staff agrees with the commentator that the specific fees charged by the broker-dealer need not be disclosed in the prospectus, but should be disclosed by the broker dealer.

Guide 28. Valuation of Securities Being Offered

Guide 28 (formerly Guide 31, as proposed) stated that Item 7 required a registrant to set forth a concise identification of the method used to value its assets.[5] The guide suggested that for portfolio securities traded on a national securities exchange, valuation should be based on market value when readily available. Two commentators asserted that, although the discussion in Guide 28 concerning the valuation of the underlying assets of the fund appears to be directed only at equity securities, it could apply to debt securities as well.

One commentator suggested that the guide should be amended to deal

[5] As discussed in the release adopting Form N–1A, the Commission believes that with regard to the method of valuation of the securities being offered, identification of the method in the prospectus is sufficient disclosure. The staff has modified the guide to reflect the position.

separately with the valuation of debt securities. That commentator suggested that a problem arises with the language of the guide in that although certain bonds are traded on national securities exchanges, these bonds should be valued instead on their principal market, *i.e.*, over-the-counter market or by use of a pricing matrix. Another commentator noted that the valuation requirement in the guide as applied to bonds does not recognize that prices for bonds listed on a national securities exchange are not representative of prices obtained in institutional trading. The guide has been revised to clarify its applicability to the valuation of both debt and equity securities.

Another commentator suggested that discussions of the specific details concerning distribution plans pursuant to rule 12b–1 should be eliminated from the prospectus. He suggested moving this discussion to Part C. However, as discussed in the release with regard to Items 7(e) and 16, the Commission believes that the disclosure of this information is appropriate. Therefore, the staff has retained the content of this guide concerning the disclosure of distribution expenses pursuant to rule 12b–1, but has created a separate guide for this matter.

Guide 30. Tax Consequences

Guide 30 (formerly Guide 32, as proposed) stated that Item 6 requires registrants to describe briefly the tax consequences to an investor of investing in the securities being offered. One commentator asserted that disclosure of the tax consequences of series funds should be unnecessary for an issuer organized as a series fund but presently having only one portfolio and "no current intention" of adding another portfolio. That commentator noted that certain funds organized as series funds do so with no present intention of issuing a second series, but rather to provide the fund with the ability to respond quickly to future political or economic developments. He contended that disclosure of the potential tax implications for such a series fund would "bewilder" a typical investor. The staff has revised the guide in accordance with this comment.

Guidelines for Form N–1A

Consistent with the Commission's practice of publishing the views of the staff to assist issuers, their counsel, accountants, and others concerned with complying with applicable provisions of the federal securities laws, this release sets forth Guidelines prepared by the Division of Investment Management for use in the preparation and filing of registration statements for open-end management investment companies on Form N–1A.

The Guidelines consist of a compilation and adaptation of applicable Commission releases and staff positions and interpretations. It is anticipated that adherence to these Guidelines will substantially expedite the examination by the Division's staff of registration statements on Form N–1A. The policies embodied in these Guidelines will be changed as experience or altered factual situations require, or should the Form itself be changed.

Registrants should be aware that these Guidelines are not rules of the Commission and, except as noted herein, represent the views of the staff of the Division of Investment Management rather than an official position of the Commission. The Guidelines should be read in conjunction with the Investment company Act Releases cited herein.

Table of Contents

Guide 1—Name of Registrant
Guide 2—Dating the Prospectus and Statement of Additional Information
Guide 3—Investment Objective and Policies
Guide 4—Types of Securities
Guide 5—Portfolio Turnover
Guide 6—Business History
Guide 7—The Borrowing of Money
Guide 8—Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements
Guide 9—Short Sales
Guide 10—Purchases on Margins
Guide 11—Underwriting Securities of Other Issuers
Guide 12—Purchase and Sale of Real Estate
Guide 13—The Making of Loans to Other Persons
Guide 14—Other Policies Which are Changeable Only if Authorized by Shareholder Vote or Which the Registrant Deems a Matter of Fundamental Policy
Guide 15—Qualification for Treatment Under Subchapter M of the Internal Revenue Code
Guide 16—Investment in Companies for the Purpose of Exercising Control or Management
Guide 17—Investment in Securities of Other Investment Companies
Guide 18—Municipal Bonds
Guide 19—Concentration of Investments in Particular Industries
Guide 20—Investment Companies Investing in Other Than High-Grade Bonds
Guide 21—Disclosure of Risk Factors
Guide 22—Government Securities
Guide 23—Foreign Currency Transactions
Guide 24—Management of the Fund
Guide 25—Investment Advisory and Other Services
Guide 26—Brokerage Allocation
Guide 27—Redemption or Repurchase
Guide 28—Valuation of Securities Being Offered
Guide 29—Distribution Expenses
Guide 30—Tax Consequences
Guide 31—Financial Statements
Guide 32—Yield Quotations of Money Market Funds
Guide 33—The Synopsis

Guide 1. Name of Registrant

The registrant's name, as set forth in Item 1 and Item 10, must be consistent with the provisions of section 35 of the Investment Company Act of 1940 ("1940 Act"). Section 35(d) provides in effect that a registered investment company may not use a name or title which may be deceptive or misleading. If the registrant's name suggests a certain type of investment policy, its name should be consistent with its statement of investment policy.

If the registrant has a name indicating that it is a money market fund, it should have investment policies requiring investment of at least 80% of its assets in debt securities maturing in thirteen months or less.

If a fund has a name that implies that its distributions will be exempt from federal income taxation it should have a fundamental policy requiring that during periods or normal market conditions either (1) the fund's assets will be invested so that at least 80 percent of the income will be tax-exempt or (2) the fund will have at least 80 percent of its net assets invested in tax-exempt securities.[1]

If the registrant's name implies that it will invest primarily in a particular type of security, other than money market instruments or tax-exempt bonds, or in a certain industry or industries, the registrant should have an investment policy that requires that, under normal circumstances, at least 65 percent of the value of its total assets will be invested in the indicated type of security or industry.[2]

Further, the registrant's name may not be so similar to the name of an existing investment company as to cause confusion in identifying the investment company.

For guidance in responding to Items 1 and 10, the registrant should refer to Investment Company Act Release No. 5510 (October 8, 1968), which *inter alia*, concerns the proprietary rights of an investment company and its adviser in the company's name.

---

[1] Investment Company Act Release No. 9785 (May 31, 1977) [42 FR 29130 (June 7, 1977)].

[2] *See* Guide 19, *Concentration of Investments in Particular Industries.*

Guide 2. Dating the Prospectus and Statement of Additional Information

The date of the prospectus required by rules 423 and 482 should be set forth on the cover page of the prospectus in response to Item 1. For purposes of Form N-1A, the date of the prospectus should be the approximate date of its effectiveness. In response to Item 10, the date of the prospectus to which Part B relates should be included on the cover page of Part B.

Guide 3. Investment Objective and Policies

In the response to Item 4, the registrant's investment objective and policies (including the types of securities in which it will invest) should be clearly and concisely stated in the prospectus so that they may be readily understood by the investor. Because the circumstances of each registrant will vary, it is not possible to define precisely what level of investment would make a particular type of investment one in which the registrant invests "principally," as that term is used in Item 4. As a general matter, however, the level of disclosure as to a particular type of investment should be consistent with the prominence of that type of investment in the registrant's portfolio. The prospectus should emphasize the main types of investments the registrant proposes to make and the basic risks inherent in such investments. Accordingly, discussions of types of investments that will not constitute the registrant's principal portfolio emphasis should be as brief as possible and, in many cases, may be limited to identifying the particular type of investments. (As discussed below, the instructions delineate certain circumstances in which disclosure may be so limited.) Similar treatment should be accorded to other types of practices, such as borrowing money. In order to achieve the objective of clear and concise disclosure, registrants should avoid extensive legal and technical detail and need not discuss every possible contingency, such as remote risks.[3]

Pursuant to Item 4(b)(i), registrant should omit from the prospectus disclosure about so-called negative investment policies, that is, policies that prohibit a particular type of investment or practice. This item may have particular applicability to those types of activities for which section 8(b) of the 1940 Act specifically requires that there be information in the registration statement. Although Item 4 generally does not attempt to define what or how much disclosure should be made about particular practices, Item 4(b)(ii) calls for minimal disclosure of policies registrant will not follow to a significant extent. Specifically, if not more than 5 percent of the registrant's net assets will be at risk, the prospectus should merely identify the policy or practice. For example, if a registrant planned to invest no more than 5 percent of its net assets in speculative growth stocks, it would be sufficient to state that policy in the prospectus without elaboration.

The response to Item 13 should include a fuller discussion in the Statement Additional Information of those investment policies of the registrant with respect to which an abbreviated or no narrative description is included in the prospectus. Fuller descriptions of the registrant's principal types of investments may also be appropriate, depending on the circumstances. The non-use of a policy in the past, as well as the registrant's intention with respect to that policy in the coming year, should also be disclosed in the Statement of Additional Information in responding to Item 13.

Guide 4. Types of Securities

Item 4 requires the registrant to discuss in the prospectus the types of securities in which it will invest to attain its investment objective. If the name of the registrant implies investment in a particular type of security (*e.g.*, Common Stock Fund), its policy should be consistent with its name (see Guide 1). The relative proportions of the registrant's assets to be invested in debt or equity securities need not be stated in terms of a percentage of total assets. However, a company which purports to be a "balanced" fund should maintain at least 25 percent of the value of its assets in fixed income senior securities. In such case, if convertible senior securities are included in the required 25 percent, only that portion of their value attributable to their fixed income characteristics can be used in calculating the 25 percent figure.

If the registrant intends to invest in foreign securities, real estate or make loans, reference should be made to Guides 21, 12, or 13, respectively.

Generally, the board purpose clauses of corporate charters are not pertinent insofar as a response to Item 4 is concerned; however, if a charter limits the registrant to a particular type of security, such limitation should be set forth.

Guide 5. Portfolio Turnover

In discussing investment techniques in response to Item 4, the registrant should briefly discuss in the prospectus the probable effect of such techniques on the registrant's rate of total portfolio turnover, if such effects will be significant and if portfolio turnover will have brokerage, tax or other significant consequences. If the registrant has had a portfolio turnover rate of approximately 100 percent or more, or, if the registrant anticipates it will have such a portfolio turnover rate, the brief discussion should include any tax and brokerge consequences which will result from the higher portfolio turnover rate. Appropriate cross-references to the sections of the prospectus which discuss income taxes and brokerage practices should follow such discussion. In responding to Item 13, the registrant should include in the Statement of Additional Information a discussion of portfolio turnover if no disclosure has been included in the prospectus or to supplement the disclosure in the prospectus. New companies, other than money market funds, should estimate what rate of portfolio turnover will, generally, not be exceeded (*e.g.*, 50 percent, 100 percent, 150 percent etc.). A company already in existence should disclose the rate of portfolio turnover for each of the past two years (but not including the period prior to the date the company's first registration statement under the Securities Act of 1933 become effective).

A "balanced fund," or other fund which invests substantial portions of its assets in both common stock and debt securities or preferred stock, should describe its portfolio turnover policy with respect to the common stock portion of its portfolio separately from the discussion of its portfolio turnover policy with respect to the other portion of its portfolio.[4]

Guide 6. Business History

The registrant should list in the Statement of Additonal Information all prior names for the past five years in response to Item 12. In the case of newly organized companies, the response should state that the registrant has no prior history.

Guide 7. The Borrowing of Money

If the registrant intends to borrow from a bank or to offer debt securities privately as a part of its investment policy, its intention should be stated in the prospects in response to Item 4. If such borrowing will be limited to no

[3] *See* individual subject headings of these Guidelines concerning disclosure for specific investment techniques or policies.

[4] *See* Guide 4, *Types of Securities.*

more than 5 percent of net assets, a simple statement to that effect will suffice. If registrant will engage in a higher level of borrowing, the purposes and consequences of such borrowing should be concisely discussed. Additional disclosure should be included in the Statement of Additional Information in response to Item 13.

Open-end companies are permitted to borrow from banks pursuant to the provisions of section 18(f) of the Act. Under section 18(g) of the Act, certain borrowings for temporary purposes are also permitted. A registrant may not borrow amounts in excess of 5 percent of the value of its total assets for any reason without first obtaining shareholder approval, unless the registrant has so provided in the prospectus in response to Item 4. Generally, the prospectus need not restate provisions of law limiting borrowing by the registrant.

Because borrowings involve the creation of a senior security, Guide 8 should also be consulted.

Guide 8. Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements

Section 18(f) of the 1940 Act prohibits the issuance of senior securities by open-end companies, except that borrowings from banks are permitted so long as the requisite asset coverage has been provided. Policies with respect to such borrowing should be set forth in the prospectus in response to Item 4, or in the Statement of Additional Information in response to Item 13 depending upon the significance of such policies (see Guide 7).

The registration statement should provide concise but clear disclosure of all pertinent information regarding the nature and consequences of the investment company's participation in securities trading practices such as reverse repurchase agreements, firm commitment agreements, and standby commitment agreements.[5] The extent to which such disclosure should be included in the prospectus will depend on the level of registrant's involvement in such practices. (see Guide 3). The registration statement should address the potential risk of loss presented to an investment company and its investors by those transactions; the identification of the securities trading practices as separate and distinct from the underlying securities; the differing investment goals inherent in participating in the securities trading practices as compared to those of investing in the underlying securities; (*i.e.*, securities used as collateral for the trading practices); and any other material information relating to such practices and the investment company's participation therein. In addition, in response to Item 1, the registrant should ensure that its name is not misleading in light of its securities trading practices.

Guide 9. Short Sales

The staff is of the opinion that a short sale involves the creation of a senior security and is, therefore, subject to the limitations of section 18 of the 1940 Act. The staff has taken the position that in order to comply with the provisions of section 18, the selling registrant must put in a segregated account (not with the broker) an amount of cash or United States government securities equal to the difference between (a) the market value of the securities sold short at the time they were sold short and (b) any cash or United States government securities required to be deposited as collateral with the broker in connection with the short sale (not including the proceeds from the short sale). In addition, until the registrant replaces the borrowed security, it must daily maintain the segregated account at such a level that (1) the amount deposited in it plus the amount deposited with the broker as collateral will equal the current market value of the securities sold short, and (2) the amount deposited in it plus the amount deposited with the broker as collateral will not be less than the market value of the securities at the time they were sold short.[6]

The practice of effecting a short sale is distinguishable from the practice of selling short "against the box." While a short sale is made by selling a security the company does not own, a short sale is "against the box" to the extent that the company contemporaneously owns or has the right to obain at no added cost securities identical to those sold short. Accordingly, the procedures described above concerning short sales that are subject to the limitations of section 18 of the 1940 Act need not be applied to short sales to the extend that they are "against the box."

If the registrant expects to engage in short sales, and short sales "against the box," its policy and the effect of such policy should be described in the registration statement. The extent to which such description should be included in the prospectus will depend upon the level of the registrant's involvement in short sales (see Guide 3). The registration statement should include:

1. An explanation of the requirement of collateral and a segregated account;
2. The maximum percentage of the value of the registrant's net assets that will be, when added together: (a) deposited as collateral for the obligation to replace securities borrowed to effect short sales, and (b) allocated to segregated accounts in connection with short sales;
3. The impact that short sales may have on income taxes.[7]

Guide 10. Purchases on Margin

In view of the prohibition contained in section 18 of the 1940 Act against the issuance of senior securities by open-end companies, except in connection with a borrowing from a bank, the staff's current interpretation is that open-end companies may not establish or use a margin account with a broker for the purpose of effecting securities transactions on margin.[8]

Guide 11. Underwriting Securities of Other Issuers

Although the acquisition of restricted securities (securities that must be registered under the Securities Act of 1933 before they may be offered or sold to the public) might not be deemed to be an underwriting commitment within the meaning of section 12(c) of the 1940 [15 U.S.C. 80a-12(c)], Act, a registrant having a policy permitting the purchase of such securities should describe that policy in the prospectus in response to Item 4 if such restricted securities constitute ten percent of the registrant's portfolio securities. Otherwise, registrant's policy with respect to restricted securities should be described in response to Item 13.

Note.—If an open-end company holds a material percentage of its assets in restricted securities, such holdings may raise questions concerning valuation and the ability of the company to make payment within seven days of the date its shares are tendered for redemption. See also Guides 13 and 27.

Guide 12. Purchase and Sale of Real Estate

It is the staff's position that an interest in real estate includes securities (other than marketable securities) of companies whose assets consist substantially of real property and interests therein, including mortgages

[5] For a more complete discussion of reverse repurchase agreements, firm commitment agreements, and standby commitment agreements, see Investment Company Act Release No. 10666 (April 18, 1979) [45 FR 25128 (April 27, 1979)].

[6] Investment Company Act Release No. 7221 (June 9, 1972) [37 FR 12790 (June 24, 1972)].

[7] Investment Company Act Release No. 7220 (June 9, 1972) [37 FR 12790 (June 24, 1972)].

[8] Investment Company Act Release No. 7221, *supra*.

and other liens, but does not include securities of companies whose investments in real estate are incidental to another business which is primary, *e.g.*, banks.[9]

Registrant should indicate the type of real estate investments which it proposes to make, if any, in response to Item 4 and Item 13, as appropriate in light of the level of any such investments (see Guide 3). The usual limit on aggregate holding by open-end companies of illiquid assets, including real estate for which there is no established market, is 10 percent of the value of its net assets.

Guide 13. The Making of Loans to Other Persons

In response to Item 13, and, if appropriate, in Item 4, the registrant should state its policy with respect to the purchase of non-publicly offered debt securities (including convertible securities) of any issuer. For the purposes of responding to these items, the making of a loan by the registrant will not include the purchase of a portion of an issue of publicly distributed bonds, debentures or other securities, whether or not the purchase was made upon the original issuance of the securities. The registrant should indicate whether it will make loans which are short term (nine months or less), long term, or both. If an open-end company holds a material percentage of its assets in debt securities for which there is no established market, there may be a question concerning the ability of the company to make payment within seven days of the date its shares are tendered for redemption. The usual limit on aggregate holdings by open-end companies of illiquid assets, including debt securities for which there is no established market, is 10 percent of the value of its net assets.[10]

Guide 14. Other Policies Which Are Changeable Only if Authorized by Shareholder Vote or Which the Registrant Deems a Matter of Fundamental Policy

Item 4 delineates the appropriate levels of prospectus disclosure with respect to investment policies which are changeable only if authorized by shareholder vote and any other policy (whether or not an *investment policy*) which the registrant elects to treat as "fundamental." Generally, there need be no discussion in the prospectus of policies that prohibit certain practices or of practices that the registrant does not intend to follow. Information concerning negative investment policies or practices is, however, required to be included in the Statement of Additional Information in response to Item 13.[11]

When the requisite vote required by the registrant's charter or by-laws is stricter than that required by the 1940 Act to change a policy (*see* section 2(a)(42) and section 13), the response in the Statement of Additional Information to Item 13 should so indicate.

Charter, by-laws or other basic organizational documents submitted as exhibits to the registration statement should be carefully reviewed to make certain a particular policy stated in response to Item 4 is not contrary to the registrant's organizational documents. For example, if a charter provision prohibits the issuance of debt or preferred stock, the registrant should not state as a policy that it intends to issue senior securities. The registrant's corporate documents should not contain any provision which appears to preclude compliance with any provision of the 1940 Act or the rules promulgated thereunder. The organizational documents also should provide the registrant's board of directors with appropriate authority to take whatever corporate action may be necessary in order to comply with any applicable federal statute or rule.

Guide 15. Qualification for Treatment Under Subchapter M of the Internal Revenue Code

The registrant should be aware that the percentage limitations necessary for qualification under Subchapter M of the Internal Revenue Code are not the same as the percentage limitations in section 5(b)(1) of the 1940 Act.

Guide 16. Investment in Companies for the Purpose of Exercising Control or Management

If one of the registrant's significant investment policies is to invest in companies for the purpose of exercising control, as defined in section 2(a)(9) of the 1940 Act, the registrant should explain in the prospectus in response to Item 4 the extent to which, and the circumstances under which, such investments will be made. A statement that the registrant is a diversified company or that it has a policy of not acquiring more than 10 percent of the outstanding voting securities of any one issuer is not an adequate response to this item, since even such registrants could invest for the purpose of exercising control or management.[12]

Guide 17. Investment in Securities of Other Investment Companies

If the registrant intends to invest to a significant degree in the securities of other investment companies, the registrant should state in the prospectus, in response to Item 4, the percentage of its assets which may be invested in such securities. If the registrant does not intend to follow such a policy to a significant degree, the registrant should state in the Statement of Additional Information in response to Item 13, the percentage of its assets which may be invested in securities of other investment companies. Registrants should be aware that section 12(d)(1) of the 1940 Act limits the percentage of voting securities which the registrant may acquire of any other investment company. That section also limits the percentage of the value of the registrant's assets which may be invested in securities of all other investment companies, subject to certain exceptions.

Guide 18. Tax-free Bonds—Issuer Diversification

The identification of the issuer of a tax-exempt security for purposes of section 5(b)(1) of the 1940 Act depends on the terms and conditions of the security. When the assets and revenues of an agency, authority, instrumentality or other political subdivision are separate from those of the government creating the subdivision and the security is backed only by the assets and revenues of the subdivision, such subdivision would be deemed to be the sole issuer for purposes of section 5(b)(1).[13] Similarly, in the case of an industrial development bond, if that bond is backed only by the assets and revenues of the non-governmental user, then such non-governmental user would be deemed to be the sole issuer for purposes of section 5(b)(1). If, however, in either case, the creating government or some other entity guarantees a security, such a guarantee would be considered a separate security which must be valued and included in the 5 percent limitation computation of section 5(b)(1) subject to the limited exclusion allowed under rule 5b-2 of the Act.[14]

[9] However, interests in companies which invest in real estate would not be considered to be interests in real estate for purposes of section 3(c)(5)(C) of the Act. *See* Investment Company Act Release No. 3140 (November 18, 1960) [25 FR 12177 (November 29, 1960)].

[10] Investment Company Act Release No. 7221, *supra*.

[11] *Id.*

[12] Investment Company Act Release No. 7221, *supra*.

[13] Investment Company Act Release No. 9785 (May 31, 1977) [42 FR 29130 (June 7, 1977)].

[14] *Id.*

Guide 19. Concentration of Investments in Particular Industries

Section 8(b)(1) of the 1940 Act requires every registered investment company to include in its registration statement a recital of its policies with respect to concentration. It is the position of the staff that investment (including holdings of debts securities) of more than 25 percent of the value of the registrant's assets in any one industry represents concentration. If the registrant intends to concentrate in a particular industry or group of industries it should, in responding to Item 4, specify in the prospectus the industry or group of industries in which it will concentrate. It it desires to change a policy of concentration, section 13(a)(3) of the 1940 Act requires that shareholder approval of a new policy must be obtained.

If the registrant does not intend to concentrate, no further investment may be made in any given industry if, upon making the proposed investment, 25 percent or more of the value of the registrant's assets would be invested in such industry. However, when securities of a given industry come to constitute more than 25 percent of the value of the registrant's assets by reason of changes in value of either the concentrated securities or the other securities, the excess need not be sold.

If the registrant has employed a policy of concentration in the past but does not intend to follow that policy in the future, its intention and it estimate of the time required to implement such intention should be specifically disclosed in the Statement of Additional Information in response to Item 13. Shareholder approval is necessary to change to a policy of not concentrating. (*See* section 13(a)(3) of the 1940 Act regarding changes in concentration policy).

Freedom of action to concentrate pursuant to management's investment discretion, without shareholder approval, has been considered by the staff to be prohibited by sections 8(b)(1) and 13(a)(3) of the 1940 Act, unless the statement of investment policy clearly indicates when and under what specific conditions any changes between concentration and non-concentration would be made. Statements of concentration policy pursuant to which registrants reserve the right to concentrate in particular industries "without limitation if deemed advisable and in the best interests of the shareholders" are viewed as failing to comply with section 8(b)(1).[15]

Money market funds may declare an investment policy on industry concentration reserving freedom of action to concentrate their investments in government securities, as defined in the 1940 Act, and certain bank instruments issued by domestic banks [16] provided that, with respect to the latter, in response to Item 13, additional disclosure is made in the Statement of Additional Information concerning the type and nature of the various instruments in which the registrant intends to invest and the criteria used by the registrant in evaluating and selecting such investments. Section 8(b)(1), however, does not permit money market funds to reserve freedom of action in their declaration of investment policy insofar as it relates to concentration of investments in the commerical paper of issuers in any one industry.[17]

Further, the statement of policy required by section 8(b)(1) as to concentration is not applicable to investments in tax-exempt securities issued by governments or political subdivisions of governments since such issuers are not members of any industry. However, this exclusion does not eliminate the requirement for each tax-exempt bond fund to disclose its policy with respect to concentration in the Statement of Additional Information. Such a policy would apply to tax-exempt bonds issued by non-governmental users as well as to other securities (*i.e.*, taxable securities) to which such policies normally apply.[18]

When a substantial amount of the assets of a tax-exempt bond fund are invested in securities which are related in such a way that an economic, business, or political development or change affecting one such security would likewise affect the other securities, appropriate disclosure in the fund's prospectus in response to Item 4 is necessary. For example, each investment company investing in tax-exempt bonds should, if 25 percent or more of its assets are or may be invested in securities whose issuers are located in the same state, indicate which states. In addition, if a company invests or may invest 25 percent or more of its assets in securities the interest upon which is paid from revenues of similar type projects, it should disclose this fact, identify the type or types of projects and briefly discuss any economic, business, or political developments or changes which would most likely affect all projects of that type or types. Such disclosure might include, for example, proposed federal or state legislation involving the financing of the projects; pending court decisions relating to the validity of the projects or the means of financing them; predicted or foreseeable shortages or price increases of materials needed for the projects; and declining markets or needs for the projects. Also, if a company invests or may invest 25 percent or more of its assets in industrial development bonds, it should disclose this fact.[19]

Note: In determining industry classifications, the staff will ordinarily use the current *Directory of Companies Filing Annual Reports with the Securities and Exchange Commission*, (the *"Directory"*) published by the Commission. A registrant may refer to the *Directory*, or may select its own industry classifications, but such classifications must be reasonable and should not be so broad that the primary economic characteristics of the companies in a single class are materially different. Registrants selecting their own industry classifications must be reasonable and should disclose them (a) in the prospectus in the case of policy to concentrate, or (b) in the Statement of Additional Information in the case of a policy not to concentrate.

Guide 20. Investment Companies Investing In Other Than High-Grade Bonds

If the registrant seeks high income by investing in other than high-grade bonds,[20] it should concisely but clearly disclose in the prospectus the risks involved in such investments either in response to Item 4 or in response to Item 1 (on the cover page). Where the registrant chooses to use certain rating

[15] Investment Company Act Release No. 9011 (October 30, 1975) [40 FR 54241 (November 21, 1975)].

[16] United States branches of foreign banks may be considered domestic banks if it can be demonstrated that they are subject to the same regulation as United States banks. Foreign branches of domestic banks, however, are not registered in the United States and are not considered "domestic banks." Nevertheless, if a registrant can disclose that the investment risk associated with investing in instruments issued by the foreign branch of a domestic bank is the same as that of investing in instruments issued by the domestic parent, in that the domestic parent would be unconditionally liable in the event that the foreign branch failed to pay on its instruments for any reason, then the staff believes that the registrant may treat that foreign branch as a domestic bank for purposes of concentration. Otherwise, the staff is of the opinion that the registrant may not reserve freedom of action to concentrate its investments in instruments issued by foreign branches of domestic banks.

[17] Investment Company Act Release No. 9011, *supra*.

[18] Investment Company Act Release No. 9785, *supra*.

[19] *Id.*

[20] Other than high-grade bonds would include, for example, bonds receiving a Standard & Poor's rating of BBB or lower or a Moody's rating of Baa or lower.

criteria in its prospectus disclosure, the registrant should also disclose what would be the minimal rating which that fund would find acceptable according to the rating criteria it has chosen.

Guide 21. Disclosure of Risk Factors

In response to Item 4, principal speculative or risk factors associated with an investment in the registrant must be disclosed in the prospectus. These factors may be due to such matters as an absence of an operating history of the registrant or the nature of the business in which the registrant engages or proposes to engage.

If the registrant intends to invest as much as 10 percent of its assets in foreign securities which are not publicly traded in the United States, such intention must be stated in the prospectus. For many foreign securities, however, there are dollar-denominated American Depository Receipts ("ADRs"), which are traded in the United States on exchanges or over-the-counter, are issued by domestic banks and do not involve the same currency risk as a foreign security. The staff is of the opinion that ADRs need not be treated as foreign securities for purposes of the risk disclosure suggested by this guide.

Guide 22. Government Securities

If the registrant is investing in United States Government securities, the prospectus should reflect under what conditions, and to what extent the registrant intends to invest its assets in United States Government securities. If the registrant is investing to a significant extent in United States Government securities on a routine basis, the prospectus should include the following information: (i) the types of Government securities in which the fund will invest; (ii) examples of Government agencies and instrumentalities in whose securities the fund will invest; and (iii) whether the securities of such agency or instrumentality are: (a) supported by full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way.

Guide 23. Foreign Currency Transactions

If the registrant proposes to invest in securities denominated in foreign currencies and engage in currency conversion transactions, disclosure of these policies should be made in the prospectus in response to Item 4 and, if appropriate, in the Statement of Additional Information in response to Item 13 (see Guide 3). If the registrant plans to use foreign currency forward contracts to cover activities which are essentially speculative, such forward contracts should be deemed "senior securities" as defined in section 18(f)(1) of the 1940 Act and thus subject to the staff's position limiting the amount of such activities as expressed in Investment Company Act Release No. 10666 (April 18, 1979) [45 FR 25128 (April 27, 1979)].

Guide 24. Management of the Fund

Item 5 calls for a description in the prospectus of how the registrant's business is managed. This item specifies that disclosure in the prospectus regarding the role of the board of directors may be limited to a general statement as to the responsibilities of the board of directors under the applicable laws of registrant's jurisdiction of organization for the management of the registrant.

Item 14 requires the registrant to disclose in the Statement of Additional Information the name and address, position with registrant, and principal occupation during the past five years of each director and officer of the registrant performing a "policy-making function" for the registrant. Any position held with affiliated persons or principal underwriters of the registrant by each of these individuals must be described. To to extent specified, family relationships among these individuals must also be disclosed. Executive, investment and advisory committee members must be identified and their function briefly discussed. In addition, the registrant must indicate which of its directors are "interested persons" as that term is defined by section 2(a)(19) of the 1940 Act.

The composition of the registrant's board of directors must satisfy section 10 of the 1940 Act. It is the staff's understanding that the Federal Reserve Board takes the position that, under section 32 of the Banking Act of 1933, an officer or director of a bank which is a member of the federal reserve system may not serve as an officer, director or employee of an open-end investment company that is currently offering its shares.[21]

An "advisory board," as that term is defined in section 2(a)(1) of the 1940 Act is a body composed of persons who serve the registrant in no other capacity. The staff interprets this provision to bar not only officer and directors but also the investment adviser for an counsel to the registrant from serving on any such board.[22] Pursuant to section 10(g) of the 1940 Act, the composition of the advisory board, if a fund chooses to have one, is also subject to the requirements of section 10 of that Act.

Registrants should note that, for the purposes of disclosure concerning registrant's officers and directors, the term "family relationship" is broader than the definition of a "member of the immediate family" contained in section 2(a)(19) of the 1940 Act.[23]

Item 14 requires the registrant to disclose in the Statement of Additional Information the aggregate remuneration received by certain officers, directors, members of the advisory board, and certain categories of such persons from the registrant and its subsidiaries, during the registrant's last fiscal year, and all retirement and pension benefits to be received by those individuals from the registrant pursuant to an existing plan. This requirement applies to any individual who was a director, officer or member of the advisory board of registrant during the last fiscal year and received aggregate remuneration in excess of $60,000.

It is the Commission's view that the registrant must disclose all forms of remuneration received by specified officers and directors.[24] "Remuneration" is intended to include cash and non-cash items, *i.e.*, not only all salaries, fees and bonuses but also personal benefits, commonly known as 'perquisites."[25] It is the Commission's view that management is in the best position to determine whether or not a benefit should be considered remuneration, depending on the facts and circumstances of each situation.

Guide 25. Investment Advisory and Other Services

Item 5 requires the registrant to identify in the prospectus its investment adviser and to state that the adviser is responsible for portfolio management. If the registrant's adviser has no previous experience in advising a mutual fund, this fact should be disclosed as a risk factor in the prospectus.

---

[21] Investment Company Act Release No. 7221, *supra*.

[22] *Id.*

[23] This use of the term "family relationship" is consistent with the staff position enunciated in Investment Company Act Release No. 7220, *supra*.

[24] As stated in Investment Company Act Release No. 9900 (August 18, 1977) [42 FR 43058 (August 26, 1977)].

[25] For a detailed discussion of those personal benefits which the staff has interpreted to be remuneration requiring disclosure, *see* Investment Company Act Release Nos. 9900, *supra*; 10112 (February 6, 1978) [43 FR 6060 (February 13, 1978)]; 11439 (November 14, 1980) [45 FR 76974 (November 21, 1980)]; 12070 (December 3, 1981) [46 FR 60421 (December 10, 1981)].

Item 16 calls for additional information in the Statement of Additional Information about the background and function of each person providing the registrant with advisory services. Particular emphasis is placed on disclosure of the identities of all controlling persons of each investment adviser and the basis for their control. The registrant must identify any affiliations between such persons and the registrant. If any affiliated person of the registrant is also an affiliated person of an adviser, the identity of that person and all bases of affiliation must be disclosed. Item 16 calls for a detailed discussion in the Statement of Additional Information concerning the method used to compute the advisory fee paid by the registrant. In addition, the registrant must describe in Part B all services performed for it, or on its behalf, pursuant to any investment advisory or management-related service contract,[26] and in each case must identify the persons paying for such services. The registrant must also summarize the substantive portions of any management-related service contract, which may be of material interest to a purchaser of the registrant's securities. Any person providing investment advice on a more informal basis must also be identified, and the nature of the arrangement and remuneration should be discussed. Registrants should be aware that all investment advisory services must be provided pursuant to a written contract which complies with the provisions of section 15 of the 1940 Act.[27]

Item 5 requires the registrant to provide in the prospectus the name and address of the transfer agent and dividend-paying agent for the investment company. Item 16 calls for identifying information concerning the custodian and independent public accountant. Custodial arrangements must be in conformity with section 17(f) of the 1940 Act and the rules promulgated thereunder. It the registrant's portfolio securities are held by any person other than a commercial bank, trust company or registered depository, the registrant must, in response to Item 16, state in the Statement of Additional Information the nature of the business of each such person. Item 16 also requires the disclosure of any services performed by, and the basis of remuneration received by, any affiliated person of registrant or of any affiliate of such affiliate which acts as custodian, transfer agent, or dividend-paying agent for registrant. If a custodian is affiliated with the investment company, the investment company is considered a self-custodian for purposes of section 17(f) of the 1940 Act and is, therefore, subject to regulatory requirements different from those applicable to other custodians.

Guide 26. Brokerage Allocation

If the registrant uses affiliated brokers or takes the sale of its shares into account when allocating brokerage,[28] a statement to that effect must be included in the prospectus in response to Item 5. Responses in the prospectus to Item 5 should be concise and should not include lengthy descriptions of practices that are standard in the investment company industry nor of technical or legal requirements. Item 17 requires registrants to provide in the Statement of Additional Information a fuller explanation of the brokerage allocation practices that they engage in. In addition, Item 17 requires the registrant to describe how transactions in portfolio securities are effected, including a statement about mark-ups on principal transactions and brokerage commissions paid during the most recent fiscal year. Further, Item 17 requires registrant to describe in the Statement of Additional Information the process it undergoes in selecting brokers and evaluating the commissions to be paid, including a discussion of the factors used in this determination process, such as the research services provided by that broker. If the research services furnished by brokers used by the registrant to effect transactions for the registrant may be used by the registrant's investment adviser in servicing all of its managed accounts, and if all such services may not be used by the investment adviser exclusively in connection with the registrant, such practices must be described and explained. If the registrant is not required to respond to Item 17 of the Form, then no disclosure suggested by this guide concerning brokerage allocation practices would be considered necessary.

Guide 27. Redemption or Repurchase

Section 22(e) of the 1940 Act prohibits the suspension of the right of redemption or the postponement of payment upon redemption of any mutual fund share for more than seven days after the proper tender of the security for redemption, except under certain specified conditions. The staff has taken the position that, under certain circumstances, redemption payments can be withheld beyond the period specified in section 22(e) to prevent the financial losses or dilution of net asset value that can occur when purchase payment checks are returned dishonored after the redemption payments have been made.[29]

The procedures for implementing payment for redemption soon after purchase must be disclosed in the prospectus, as should any procedures an investor can follow to avoid any delay in payment upon redemption, such as submission of a certified check along with purchase order.

Item 8 requires the registrant to include in the prospectus a brief description of the procedures for redeeming shares or having shares repurchased by the registrant. Any charges or restrictions applying to such procedures imposed by the distributor or principal underwriter must be disclosed in the prospectus. In addition, the prospectus should disclose the fact that if a shareholder uses the services of a broker-dealer for the repurchase of registrant's shares there may be a charge to the shareholder for such services. The specific fees charged by the broker-dealer for such services, however, do not need to be disclosed.

Item 19 permits the registrant to provide a fuller description in the Statement of Additional Information of matters relating to these redemption or repurchase procedures. Item 8 requires brief discussions in either the prospectus or Statement of Additional Information, at the discretion of the registrant, of any provisions for involuntary redemptions, delays in redemptions, reinvestment privileges for those who redeem, and in kind redemptions. If the registrant has made an election for redemption pursuant to rule 18f-1 under the 1940 Act, such policy must be described in the

[26] *See* instructions to Item 16(d) of Form N-1A for the definition of the term "management-related service contract".

[27] Registrants should note that the disclosure requirements of both Part A and Part B apply to sub-advisers as well, *see* Investment Company Act Release 7220, *supra*.

[28] On March 4, 1981, the Commission approved an NASD proposal to amend portions of Article III, Section 26 of the NASD Rules of Fair Practice and related interpretations of the "Anti-Reciprocal Rule," Investment Company Act Release No. 11662 (March 4, 1981) [46 FR 16012 (March 10, 1981)]. The rule as amended no longer prohibits NASD members from seeking or granting brokerage commissions in connection with the sale of investment company shares, and permits NASD members to sell shares of investment companies that follow a disclosed policy of considering sales of their shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to specified conditions.

[29] For a discussion of the conditions under which an investment company can delay redemption or repurchase for more than seven days pending clearance of share purchase checks, *see* Investment Company Institute (Pub. avail. May 3, 1975).

Statement of Additional Information in response to Item 19 to the extent such information has not been provided by the registrant, at its discretion, in the prospectus.

If the registrant includes a synopsis in the prospectus, the synopsis should indicate where in the prospectus investors can find a description of the redemption and repurchase procedures available.[30]

In the staff's experience, redemption procedures are a frequent source of confusion for investors. Therefore, the following areas of disclosure deserve special attention: (a) differences, if any, in methods for redeeming certificated fund shares that are in the shareholder's possession, as opposed to uncertificated shares held by the fund for the shareholder; and (b) when signature guarantees are necessary, and who is an appropriate person to make such a guarantee.[31]

Guide 28. Valuation of Securities Being Offered

Item 7 requires a registrant to identify in the prospectus the method used to value the assets. In some circumstances, value can be determined fairly in more than one way. For any asset traded on a national exchange, valuation normally should be based on market value when readily available.[32] If a security was traded on the valuation date, the last quoted sale price generally is used. In the case of securities listed on more than one national securities exchange, the last quoted sale, up to the time of valuation, on the exchange on which the security is principally traded should be used or, if there were no sales on that exchange on the valuation date, the last quoted sale, up to the time of valuation, on the other exchanges should be used.

If there was no sale on the valuation date but published closing bid and asked prices are available, the valuation in such circumstances should be within the range of these quoted prices. Some companies as a matter of general policy use the bid price, others use the mean of the bid and asked prices, and still others use a valuation within the range of bid and asked prices considered best to represent value in that circumstance; each of these policies is acceptable if consistently applied. Normally, the use of the asked price alone is not appropriate. Where, on the valuation date, only a bid price or an asked price is quoted or the spread between bid and asked prices is substantial, quotations for several days should be reviewed. If sales have been infrequent or there is a thin market in the security, or the size of the reported trades is considered not representative of the fund's holding (as in the case of certain debt securities), further consideration should be given as to whether "market quotations are readily available." If it is decided that they are not readily available, the alternative method of valuation prescribed by section 2(a)(41)—"fair value as determined in good faith by the board of directors"—should be used.

For debt or equity securities traded over-the-counter where closing prices are not readily available, quotations for a security should be obtained from more than one broker-dealer, particularly if quotations are available only from broker-dealers not known to be established market-makers for that security. A company may adopt a policy of using a mean of the bid prices, or of the bid and asked prices, or of the prices of a representative selection of broker-dealers quoted on a particular security; or it may use a valuation within the range of bid and asked prices considered best to represent value in that circumstance. The staff will consider any of these policies appropriate if consistently applied.

If the validity of the quotations appears to be questionable, or if the number of quotations is such as to indicate that there is a thin market in the security, further consideration should be given to whether "market quotations are readily available." If it is decided that they are not readily available, the security should be considered one required to be valued at "fair value as determined in good faith by the board of directors."

To comply with section 2(a)(41) of the Act and rule 2a-4 under the Act, the directors must satisfy themselves that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered and determine the method of arriving at the fair value of each such security. No single standard for determining "fair value in good faith" can be established, since fair value depends upon the circumstances of each individual case. As a general principle, the current "fair value" of an issue of securities being valued by the board of directors would be the amount which the owner might reasonably expect to receive for them upon their current sale.[33]

Securities held under circumstances where the sale of such securities to the public would not be permissible without an effective registration statement under the Securities Act are considered securities for which market quotations are not readily available. They must, therefore, be valued in good faith by the board of directors.[34] It would be improper for the board of directors to value these securities at the market quotation for unrestricted securities of the same class without considering other relevant factors, although this may be a factor considered in structuring the final valuation.[35] The existence of a shelf registration for the restricted securities may be properly considered by the board of directors as another factor in the determination of the value of such securities, but there may not be an automatic valuation at market price based on this factor alone.[36]

The valuation of short sales of securities, which are not traded on a national exchange, can be at the asked price, that being the most conservative value, or the mean average of bid and asked prices. The use of bid price alone to value short positions is not appropriate.

Certain securities trading practices such as reverse repurchase agreements, firm commitment agreements and standby commitment agreements required the consideration of special factors in connection with valuation. For example, changes in the value of a firm commitment agreement will affect the price at which shares of an investment company may be sold, redeemed or repurchased. Accordingly, directors, in determining fair value, must take care that no inaccuracies exist with regard to the valuation of such trading practices.[37] In valuing standby commitments (puts), registrants using the amortized cost method of valuation should indicate that the acquisition of a standby commitment will not affect the valuation of the

[30] See Guide 33, *The Synopsis*.

[31] See Investment Company Act Release No. 7221, *supra*.

[32] Investment Company Act Release No. 7221, *supra*. For debt securities, the staff is aware that registrants often value portfolio securities by reference to other securities which are considered comparable in rating, interest rate, due date, etc. (often called "matrix pricing") or rely on pricing services which use matrix pricing for valuation of these instruments. (Of course, a pricing service does not need to rely on a matrix to develop the prices it supplies to registrants.) Although the staff does not object to the use of matrix pricing or a pricing service by funds, registrants should be aware that it is their responsibility to ascertain that these methods are relying on the proper criteria in their valuation process.

[33] For a general discussion of the factors to be considered in this determination, *see* Investment Company Act Release No. 6295 (December 23, 1970) [35 FR 19986 (December 31, 1970)].

[34] Investment Company Act Release No. 7221, *supra*.

[35] Investment Company Act Release No. 5847 (October 21, 1969) [35 FR 253 (December 31, 1970)].

[36] Investment Company Act Release No. 6121 (July 20, 1970).

[37] Investment Company Act Release No. 10666, *supra*.

underlying security which will continue to be valued in accordance with the amortized cost method. The actual standby commitment will be valued at zero in determining net asset value. In such event, where the fund pays directly or indirectly for a standby commitment, its cost will be reflected as an unrealized loss for the period during which the commitment is held by the fund and will be reflected in realized gain or loss when the commitment is exercised or expires.[38]

The maturity of a municipal obligation purchased by the fund will not be considered shortened by any standby commitment to which such obligation is subject. Therefore, standby commitments will not affect the dollar weighted average maturity of the fund's portfolio. [However, where a money market fund acquires a variable rate or floating rate municipal obligation having a demand feature which allows the fund unconditionally to obtain the amount due from the issuer upon notice of seven days or less, the maturity of the instrument will normally be the longer of the notice period for the commitment or the time remaining to the next rate adjustment.]

Money market funds with portfolio securities that mature in one year or less may use the amortized cost or penny rounding method to value their securities pursuant to the conditions of rule 2a–7.[39] If the portfolio of a money market fund is to be valued at amortized cost, there must be disclosue in the Statement of Additional Information in response to Item 19 concerning the effect of this method of valuation on the fund's net asset value and yield as interest rates change and the corresponding dilution of shareholders' interest.

Item 7 requires a statement in the prospectus as to when calculations of net asset value are generally made. The current net asset value of redeemable securities should be computed at least once daily on each day in which there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the investment company's redeemable securities might be materially affected by changes in the value of these portfolio securities and on which an order for purchase, redemption, or repurchase of its securities is received. The calculations of net asset values should be made at such specific time or times during the day as determining no less frequently than annually by a majority of the board of directors of the investment company. An investment company need not compute net asset value on a day when no security was tendered for redemption and no order to purchase or sell such security was received or was on hand, having been received since the last previous computation of net asset value.[40]

The prospectus disclosure regarding sales charges should make it clear that the term "offering price" as used throughout the prospectus includes the sales charge, if any.

Guide 29. Distribution Expenses

Item 7 requires that funds which bear distribution expenses in accordance with rule 12b–1 disclose this fact to shareholders in the prospectus.[41] It is also required that the registrant state clearly in the prospectus, if applicable, that banks may be paid for their services by the investment company pursuant to its 12b–1 plan. The prospectus should discuss the possible applicability of the Glass-Steagall Act whenever special arrangements will be made to sell shares of the fund to customers of depository institutions. This disclosure should include identification of the legal issues presented by such payments to depository institutions and the consequences for the fund if these issues are ultimately resolved adversely.

Guide 30. Tax Consequences

Item 6 requires the registrant to describe briefly in the prospectus the tax consequences to investors of an investment in the securities offered. Thus, a series company having more than one portfolio, which is treated as a single entity in computing net profits, must disclose the possibility of an advantage accruing to the shareholders of one series by offsetting the gains in that series against the losses in another, or a concomitant disadvantage, if the gains realized by one series must be described as taxable long-term gains, because earlier losses of that series which might have offset those gains had been used already to offset gains in another series.[42] A series fund having only a single portfolio need not disclose the tax consequences appurtenant to being organized as a series fund, if the fund has no current intention of adding another portfolio to the series.

It is the position of the Division that it is misleading for tax-exempt bond funds to discuss the federal income tax-exempt status of their distributions in their prospectuses, advertisements and supplemental sales literature unless, to the extent applicable, such a discussion is accompanied by disclosure indicating that some or all of the distributions may be subject to federal, state, and local income taxation; that distributions which are exempt from federal taxes may be subject to state and local taxation; and that capital gains realized by the fund generally will be subject to taxation at each level.

Investment companies that intend to qualify under section 852(b)(5) of the Internal Revenue Code, which allows tax-exempt status for certain interest distributions, should disclose in the Statement of Additional Information in response to Item 20 the basis that will be used for determining the designated percentage of each distribution to be exempt and the approximate time at which such designation will be made. If the "actual earned" method is used, the disclosure should indicate that the percentage of the distribution that is tax-exempt may vary from distribution to distribution. If the "average annual" method is used, the disclosure should make clear that the percentage of income designated as tax-exempt for any particular distribution may be substantially different from the percentage of the company's income that was tax-exempt during the period covered by the distribution.

Registrant must disclose in the prospectus in response to Item 6 that there is a possibility that shareholders may lose the tax-exempt status on the accrued income of a municipal bond if they redeem their shares before a dividend has been declared. Thus, the dates on which dividends will be declared should be disclosed in the prospectus so shareholders know when a redemption can be effected with the least possible adverse tax consequences. The Division believes that section 36 of the 1940 Act may require that directors and management of such funds consider the dates of redemptions under any automatic withdrawal programs which the fund may have when setting dividend declaration dates in order to maximize, consistent with the tax-exempt income objective of the fund, the amount of

[38] There may be alternative methods of valuation of standby commitments, but in any event the value of the standby commitment together with the underlying security should not exceed the amount received by the fund upon disposal of the underlying security.

[39] Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)].

[40] Investment Company Act Release No. 10827 (August 13, 1979) [44 FR 48660 (August 20, 1979)].

[41] For a more detailed discussion of the contents of the rule see Investment Company Act Release No. 11414 (November 5, 1980) [45 FR 73896 (November 7, 1980)].

[42] Investment Company Act Release No. 9786 *supra*.

income or gain which is tax-exempt for shareholders under these programs.[43]

In determining mutual fund dividends which qualify for the dividend exclusion, registrant should note Revenue Ruling 80-345 (December 29, 1980).

In regard to the Subchapter M disclosure required in the prospectus by Item 6, if more than 50 percent of registrant's stock is owned by five or fewer persons, the registrant may be a "personal holding company" under the Internal Revenue Code and unable to meet the requirements of Subchapter M so long as that ownership continues. Appropriate disclosure of any adverse tax consequences to the investors as a result of this status is required in the prospectus. The response should summarize registrant's tax status at the time of filing as well as its future intention with respect to qualification under the Code.[44]

If there are any special or unusual tax aspects of the registrant that exist the registrant must describe these fully in response to Item 20.

Guide 31. Financial Statements

The form, content, and presentation of financial statements is discussed in Regulation S-X [17 CFR Part 210].

Guide 32. Yield Quotations of Money Market Funds

For guidance in responding to Item 3(c) and Item 22, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) [48 FR 10297 (March 11, 1983)]; Investment Company Act Release No. 11028 (January 28, 1980) [45 FR 7578 (February 4, 1980)]; and Investment Company Act Release No. 11379 (September 30, 1980) [45 FR 67079 (October 9, 1980)].

Guide 33. The Synopsis

If the registrant determines that inclusion of a synopsis is appropriate because of the length or complexity of the prospectus, that synopsis should be a clear and concise description of the salient features of the offering and the registrant. The information provided in the synopsis need not be set forth in the order or the manner described in this Guide. Further, the information may be presented in a question-and-answer format.

A synopsis provided pursuant to Item 2 of Form N-1A should, in the staff's opinion, include: (i) a brief description of how the registrant proposes to achieve its investment objectives, including identification of the types of securities in which the registrant proposes to invest primarily and a statement as to whether the registrant proposes to operate as a diversified or non-diversified investment company; (ii) a summary of the principal speculative or risk factors associated with investment in the registrant, including factors peculiar to the registrant as well as those generally attendant to investment in an investment company with objectives and policies similar to registrant's; (iii) a statement of the total expenses incurred by the registrant in the previous fiscal year as a percentage of net assets and a statement of any direct charges made by the registrant to shareholder accounts during such fiscal year, if the registrant has had an operating history of at least one full fiscal year. If the registrant does not have an operating history of one full fiscal year, the registrant should include the maximum investment advisory or other asset based fee that may be charged and a list of the other significant types of expenses the registrant expects to incur, including any direct charges to shareholder accounts; and (iv) the nature of the securities being offered.

The synopsis should also: (i) provide the name of the investment adviser, and, if any other person provides services of the type customarily provided by an investment adviser, the identity of such person and the services so provided; (ii) provide a cross-reference to the description in the prospectus of how to purchase the securities being offered; and (iii) provide a cross-reference to the description in the prospectus of how a shareholder may effect redemption and, if applicable, a repurchase transaction.

Finally, the synopsis may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of the information required to be presented in the prospectus.

[FR Doc. 83-22864 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-0-M

[43] *Id.*

[44] Investment Company Act Release No. 7221, *supra*.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

Geological and Geophysical Explorations on the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides for monthly, rather than weekly, status reports to be submitted to the Minerals Management Service (MMS) with respect to activities conducted under a permit for geological and geophysical (G&G) exploration for mineral resources or G&G scientific research offshore. The Department of the Interior (DOI) has determined that the submission of these reports on a monthly basis will be adequate to meet the purposes of the OCS Lands Act (OCSLA) and will significantly reduce the burden imposed on those permittees required to submit the reports.

EFFECTIVE DATE: September 21, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12291 (issued February 17, 1981) directed all executive branch Agencies to "initiate reviews of currently effective rules in accordance with the purposes" of that Order (E.O. 12291, § 3(i)). One stated purpose of that Order is "to reduce the burdens of existing . . . regulations" (E.O. 12291, preamble).

The MMS identified 30 CFR 251.7-2 as a regulation which warrants revision under the criteria of E.O. 12291. That section required the weekly submission of status reports with respect to all activities conducted under a permit for G&G exploration offshore.

On January 10, 1983 (48 FR 1083), MMS published a rulemaking document that proposed to reduce from weekly to monthly the frequency of the reports required by 30 CFR 251.7-2. The public comment period on the proposal expired on February 9, 1983.

Public Comments

A total of 16 comments was submitted in response to the proposed rule. All were from industry or trade organizations, and all expressed support for the rule as it was proposed.

One commenter suggested that circumstances occasionally arise which warrant a period even longer than 1 month between progress reports. For example, where a G&G expedition may take longer than 1 month, this commenter contended that it would be appropriate to require progress reports on a "cruise" basis rather than monthly.

Specifically, this commenter recommended that we revise 30 CFR 251.7–2 to read:

> Each permittee shall submit status reports on a monthly basis, or otherwise on a less frequent basis requested by the permittee and approved by the Director, in a manner approved or prescribed by the Director.

The MMS disagrees with the recommendation that an exemption from the monthly requirement should be incorporated into the regulation. The example cited by the commenter can be addressed by means of the discretion that already exists in 30 CFR 251.7–2. In a situation where it is likely that a G&G vessel will be at sea for a period longer than 1 month, the Director may "approve or prescribe" that the submission of progress reports required, while the expedition is ongoing, may be made by radio telephone, thus obviating the need to return to shore for the sole purpose of submitting a report. Moreover, MMS has determined that the requirement for monthly progress reports represents the minimum burden that can be imposed on permittees consistently with the regulatory responsibilities of MMS.

Two commenters expressed concern that a reduced frequency of progress reports might jeopardize the competitive position of participants in continental offshore stratigraphic test (COST) wells, i.e., wells drilled for the sole purpose of gathering basic data concerning the rocks in the subsurface. Since the stakes involved in these COST wells are very high, the regulations [at 30 CFR 251.6–3] impose a 300 percent penalty on late participants who become involved in a COST well operation after a significant show is encountered. The commenters were concerned that reducing the frequency of progress reports from weekly to monthly might increase the risk that confidential information will leak to competitors who might elect to participate while avoiding the 300 percent late penalty. These commenters recommended that the release of a "public notice announcing a significant hydrocarbon occurrence" (the time after which participation reults in the 300 percent late penalty imposed by 30 CFR 251.6–3) should be made retroactive to the date on which MMS was informed of a show.

While MMS agrees that the concerns of these commenters maybe well founded, the underlying problem is unrelated to this rulemaking. Independent of the requirement for monthly progress reports in 30 CFR 251.7–2, 30 CFR 251.3–5(b)(1) provides that any operator under a G&G permit shall immediately report to the director when G&G activities detect hydrocarbon occurrences. This requirement is not affected by the submission of the progress reports required by 30 CFR 251.7–2, whether on a weekly or monthly basis. Rather, the problem identified by these commenters appears to stem from the delay that occasionally occurs in issuing a public announcement after MMS is notified of a show. The MMS will examine this issue as to whether an administrative or regulatory adjustment to 30 CFR 251.6–3 is necessary or desirable. In the meantime, MMS will comply with the requirement of 30 CFR 251.14–1(c)(1) that the Director announce significant hydrocarbon occurrences "in a form and manner that will further the national interest without unduly damaging the competitive position of those conducting the drilling."

The MMS has determined that the submission of monthly, rather than weekly, reports will be adequate to meet the purposes for which the information is used. The MMS has further determined that such a reduction in frequency will significantly reduce the regulatory burden imposed on those permittees required to comply with 30 CFR 251.7–2. Thus, this revision meets the requirement of the OCSLA, is consistent with the purpose of E.O. 12291 (cited above), and furthers the Secretary of the Interior's regulatory reform effort.

The DOI has determined that this document is not a major rule under E.O. 12291 and certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

Paperwork Reduction Act

The information collection requirements contained 30 CFR 251.7 have been approved by the Office of Management and Budget under 44 U.S.C 3504(h) assigned clearance number 1010–0036.

Drafting Information:

This document was drafted by Neil Stoloff, Offshore Rules and Operations Division, Minerals Management Service.

List of Subject in 30 CFR Part 251

Continental Shelf, Freedom of information, Public lands—mineral resources, Reporting and recordkeeping requirements, Science and technology.

Dated: June 22, 1983.

William P. Pendley,

Assistant Secretary of the Interior.

PART 251—[AMENDED]

* * * * *

For the reasons set forth above, 30 CFR Part 251 is amended as shown:

1. A new paragraph (b) is added to § 251.0 as a follows:

§ 251.0 Authority for information collection.

(b) The information collection requirement contained in 251.7–2 has been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010–0036. The information is being collected and will be used to monitor the progress of activities carried out under an offshore permit. The obligation to respond is mandatory.

2. Section 251.7–2 is revised to read as follows:

§ 251.7–2 Progress report on activities conducted under a permit.

Each permittee shall submit status reports on a monthly basis in a manner approved or prescribed by the Director. The shall include a daily log of operations.

[FR Doc. 83–23008 Filed 8–19–83; 8:45 am]
BILLING CODE 4310-MR-M

VETERANS ADMINISTRATION

38 CFR Part 21

Education Benefits; Implementing Legislation

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The following regulatory provisions implement those provisions of the Veterans' Rehabilitation and Education Amendments of 1980 which affect people receiving educational assistance under chapters 34, 35, and 36, title 38, United States Code; revise the method of making charges against the entitlement of a veteran or eligible person; define independent study; and make other technical changes.

The amendments implementing the Veterans' Rehabilitation and Education Amendments of 1980 provide for increases in monthly rates and other significant changes in the VA (Veterans Administration) educational assistance programs. Some of the changes are liberalizing. Some are more restrictive. Others are minor or technical.

Some of the provisions of the Veterans' Rehabilitation and Education Amendments of 1980 have been superseded by later legislation. These changes include provisions concerning incarcerated veterans and eligible persons, the reimbursement percentage for veterans and eligible persons pursuing correspondence courses and the percentage of vocational course graduates who have found employment. However, decisions made by VA employees concerning matters which arose after the applicable effective date of enactment of the Veterans' Rehabilitation and Education Amendments provisions, and before the subsequent enactment of amendatory legislation require appropriate regulations. Therefore, these regulations are still required, and are made final. Revised regulations to implement the later legislation will be proposed shortly.

EFFECTIVE DATES: In keeping with Pub. L. 96-466, the amendments to the following sections are effective October 1, 1980: §§ 21.1032 (d), 21.1041 (a), 21.1045 (a), (b), (d) and (e), 21.3032(c), 21.3300 (a) and (b), 21.3301 (a), (c) and (d), 21.3302, 21.3303, 21.3304, 21.3305, 21.3306, 21.3307, 21.3333 (a)(1), (b)(1) and (3) and (c), 21.4009(a), 21.4020, 21.4022, 21.4025, 21.4102, 21.4105(b), 21.4130 (a) and (c), 21.4131 (b), (h) and (i), 21.4135, 21.4136 (a)(1), (h), (j), (l), (m), (n), (o), (p), (q), (r), (s) and (t), 21.4137 (i), (j) (k), (l), (m), (n) and (o), 21.4138, 21.4140, 21.4200 (g), (h), (n), (o), (p), (q) and (r), 21.4201 (a), (c), (d), (e), (f) and (g), 21.4203(a), 21.4206, 21.4231, 21.4233, 21.4235, 21.4236(b), 21.4237 (b) and (d), 21.4250, 21.4251(a), 21.4252(g), 21.4260, 21.4263, 21.4270, 21.4272, 21.4277, 21.4280, 21.4501, 21.4503(b) (3), (4) and (5) and 21.4504(a).

The portions of the following regulations pertaining to the first rate increase are also effective October 1, 1980: §§ 21.1041(d) (2), 21.1045(g), 21.3046(c), 21.3300(c), 21.4136(c), 21.4137(a), 21.4253(c)(3), 21.4236 (c) and (d), 21.4279 and 21.4503(b)(2).

The cancellation of §§ 21.4235(j) and 21.4251(g) also is effective October 1, 1980.

The amendment to § 21.3333(a)(2) is effective January 1, 1981. Furthermore, the portions of the following regulations which pertain to the second rate increase are effective January 1, 1981. §§ 21.1041(d)(2), 21.1045(g), 21.3046(c), 21.3300(c), 21.3333 (a)(2), (b)(2), 21.4136 (a)(2) and (c), 21.4137(a), 21.4153(c)(3), 21.4236 (c) and (d), 21.4279 and 21.4503(b)(2).

Amendments which are not based upon Pub. L. 96-466 are effective August 1, 1983. These include amendments to §§ 21.1030, 21.1031, 21.1032 Introduction, (b), (c), 21.1041 (b) and (c), 21.1043, 21.1045 (c), (f), (h), (i), (j) and (k), 21.3032(b), 21.3300(d), 21.3301(b), 21.4001, 21.4002(a), 21.4006, 21.4007, 21.4008, 21.4009(b), 21.4105(a), 21.4230 (b), (d), (e), and (f), 21.4131(g), 21.4139, 21.4145, 21.4153 (a), (b), (c)(1), (2) and (4), (d), (e), (f) and (g), 21.4154, 21.4200 (s), (t) and (u), 21.4201(h), 214202, 21.4203(b), 21.4205, 21.4207, 21.4208, 21.4209, 21.4232, 21.4236(a), 21.4237(e), 21.4251 (c), (d), (f) and (g), 21.4252(h), 21.4253(c), 21.4500 (d), (e), (f) and (h), 21.4502, 21.4503(b)(6), 21.4504(b) and 21.4506

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Adminstration, Education Service, Department of Veterans Benefits, Veterans Adminstration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2092).

SUPLEMENTARY INFORMATION: On pages 46305 through 46335 of the **Federal Register** of October 18, 1982 there was published a notice of intent to amend part 21 to implement the provisions of the Veterans' Rehabilitation and Education Amendments of 1980.

Interested people were given 60 days to submit comments, suggestions or objections. The Veterans Administration received eleven letters containing many comments. Three letters were written by educational organizations; one letter was sent by a State approving agency; colleges and universities sent the remainder of the letters.

Two of the letter writers objected to the change in the definition of "standard class session" contained in § 21.4200(g). In particular they objected to the deletion of the word "normally" as making this regulation too restrictive.

The VA does not think it has the authority to leave the definition of "standard class session" unchanged. The Veterans' Rehabilitation and Education Amendments of 1980 provided a definition of "standard class session" which did not include the word "normally". In this case where the Congress has corrected a definition which the VA has used previously, the agency has no choice but to follow the definition stated in the law. In order to alleviate any problems which this may cause colleges and universities which have class sessions shorter than 50 minutes, § 21.4272(f) now contains a provision which permits measurement of these courses on the same basis as courses with standard class sessions.

Two colleges objected to the apparent retroactive increase in monthly benefits. They feared this would require them to recalculate the amount of financial aid due students during the last school year.

The VA must retain the October 1, 1980 and the January 1, 1981 effective dates inasmuch as the law so provides. Although the VA regulations, which these changes amend, provided for a lower rate of payments, the VA, after September 30, 1980, actually made payments based on the higher rates stated in the law. The rates now being incorporated in the regulations, therefore, are not retroactive, but merely show the rates governing payments made since October 1, 1980. If a veteran received the higher rates from the VA but misled others as to the fact in order to obtain other forms of student aid, the group or agency providing the aid must seek redress from the student.

One person objected to the proposed amendment to § 21.4252(g). He stated that vocational schools should not be penalized if their graduates do not find employment. This regulation is based upon the requirements for vocational school graduates enacted among the provisions of the Veterans' Rehabilitation and Education Amendments of 1980. This requirement was cancelled in 1982 by subsequent legislation; however the VA has decided to make this regulation final without change to provide guidance for cases which arose during the 1980-82 period. It obviously will apply only to the period 1980-82, since a new regulation will be proposed and adopted to provide rules in accordance with the current law.

The VA received two comments on the amendment to § 21.4260. One commenter suggested not making these regulations final until the Department of Education makes final its regulation concerning training in foreign medical schools. He pointed out that the General Accounting Office has suggested that the VA follow the lead of the Department of Education in this area.

The VA has decided not to accept this suggestion. The Department of Education published its final rules concerning foreign medical schools on February 25, 1983. Rather than wait many months while the VA examines these rules and determines their applicability to the GI Bill, the VA is making this regulation final. If, after completing its review of the Department of Education regulations, the VA

determines that further amendments to § 21.4260 are necessary, it will propose them.

The other commenter criticized § 21.4260 for stating that a foreign degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution in the foreign country. The writer stated that it would be better to require that the veteran obtain a statement from an American graduate school that the degree is acceptable for entrance into the graduate school without qualification.

After carefully considering this suggestion, the VA decided not to accept it. The Congress changed the definition of a foreign institution of higher learning so as to require the VA to rely upon the minister of education in the foreign country. It is in keeping with this action of the Congress to rely upon the standards of the foreign country to determine which foreign degree is the equivalent of a standard college degree.

Five writers stated that the provision of § 21.4277(a) requiring State approving agencies to approve a school's standards of progress is an infringement upon academic freedom. The VA did not intend to infringe upon the academic freedom of colleges and universities. But to remove all doubt, the requirement contained in this portion of the proposal is being deleted from the final regulation. This does not relieve colleges and universities of the requirement contained in the law that they include their standards of progress in their catalogs, and that they submit the catalogs to the State approving agency.

One person stated that if not required elsewhere in the regulations, § 21.4201 should be amended to state that educational institutions should retain their records concerning compliance with the 85–15 percent veteran-nonveteran ratio requirement. The records retention requirements are covered adequately by § 21.4209. Therefore, the VA is not adopting the suggestion.

One writer stated that the amendment to § 21.4202 did not make clear that it is concerned only with disapprovals for further enrollments of veterans and eligible persons rather than further enrollments of anyone. She suggested that § 21.4202 be rewritten.

When read in the context of the entire § 21.4202 including paragraphs (b) and (c), it is clear that § 21.4202 deals only with stopping payments of educational assistance allowance to veterans and eligible persons. Accordingly, the VA has not adopted this suggestion.

One writer suggested that the terms, "reasonable diligence" and "without delay," contained in § 21.4206(e), be defined specifically.

The VA has not adopted this suggestion. What constitutes "reasonable diligence" and reports made "without delay" regarding noncompliance with the law will depend on the individual circumstances at an educational institution. Any attempt to anticipate all possible circumstances or to impose arbitrary standards could lead to unduly restrictive rules, to the detriment of the educational institutions. The agency will monitor this situation. If, in the course of administering this provision, it becomes apparent that strict definitions are needed in order to prevent abuse by the educational institutions, the VA will propose appropriate revisions to the regulation.

Two writers expressed concern about § 21.4272. One stated that State approving agencies should be involved in measuring courses with insufficient, standard class sessions.

The law provides that the approval of courses is generally the function of the State approving agency, while the measurement of courses is the function of the VA. Certainly, while the VA will welcome and consider any suggestions which any State approving agency may have, the ultimate responsibility for making a final determination must be the VA's. To require State approving agency involvement would improperly imply that the VA's decision is subject to the State approving agency's concurrence.

The other writer suggested that the VA rewrite § 21.4272(f) to make clear that regional accrediting associations do not define the length of a class session as do some of the specialized accrediting groups. However, the proposed wording is broad enough to cover all agencies that do, and the regional groups may elect to do so in the future. The paragraph will not have to be amended if the regional accrediting associations change their policies in the future. The agency has added a phrase to § 21.4272(f) to show that it may apply to regional accrediting associations as well as to other accrediting associations.

As a result of the VA's own internal analysis, some modifications have also been made to §§ 21.4131, 21.4135 and 21.4136. These regulations more accurately reflect the law's effect on payments to incarcerated veterans and eligible persons.

The VA has determined that these regulations contain no major rules as defined in Executive Order 12291.

The regulations will not of themselves have an effect on the economy of $100 million or more annually. They contain an increase in the monthly rates of educational assistance allowance which has an effect of this magnitude. This increase, however, merely restates what is already stated in the law (Pub. L. 96-466).

These amended regulations should not cause a major increase in costs for anyone. There may be an increase in costs for some high schools which will have to keep additional records if they admit a serviceperson, but this increase should be minor.

These amended regulations will not have any 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.

Regulatory Flexibility Analysis. A few of these regulations would have a significant economic impact on small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. In some cases the impact would be positive.

The VA received no comments on its initial regulatory flexibility analysis. Anyone interested in obtaining the final regulatory analysis for these regulations should write to: June C. Schaeffer [225], Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420

The regulatory flexibility analysis analyzes the amendments to 38 CFR 21.4130, 21.4277, 21.4201, 21.4252, and 21.4206. The Administrator of Veterans' Affairs hereby certifies that the remainder of these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C 601–612. The remainder of the regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603–604. This certification is based on the fact that the remainder of the regulations either make mere editorial and internal technical changes, or primarily will affect individual benefit recipients. While the latter may have some indirect economic effect on some small entities, it will not be significant in magnitude.

The Catalog of Federal Domestic Assistance number for the programs affected by this proposal are 64.111 and 64.117

List of Subjects in 38 CFR Part 21

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

Approved: August 1, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

The Veterans Administration amends 38 CFR Part 21 as set forth below:

1. Section 21.1030 is revised as follows:

§ 21.1030 Claims.

The veteran must file a specific claim for educational assistance allowance in the form prescribed by the Administrator. Servicepersons must consult with their service education officer before applying for educational assistance. (38 U.S.C. 1671)

2. In § 21.1031, paragraph (a) is revised as follows:

§ 21.1031 Informal claims.

(a) The Veterans Administration will consider any communication from a veteran, an authorized representative or a Member of Congress to be an informal claim, if it indicates an intent to apply for educational assistance. If the veteran has not filed a formal claim, the Veterans Administration will send him or her an application form when it receives an informal claim. If the Veterans Administration receives the application form within 1 year after the date it was sent to the veteran, the Veterans Administration will consider it filed on the date of receipt of the informal claim. (38 U.S.C. 1671)

* * * * *

3. In § 21.1032, the introductory portion preceding paragraph (a) and paragraphs (b), (c) and (d)(1) are revised as follows:

§ 21.1032 Time limits.

The provisions of this section are applicable to original applications, formal or informal, and to applications for increased educational assistance allowance because of a dependent. (38 U.S.C. 1671)

* * * * *

(b) *New claim.* After the claim is abandoned, any subsequent communication which is an informal claim is a new application. The date of receipt of the communication is the date of application. (38 U.S.C. 1671)

(c) *Failure to furnish claim or notice of time limit.* Failure to furnish any form or information concerning the right to file claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions.

(d) *Time limit for filing a claim for an extended period of eligibility.* * * *

(1) October 17, 1981. [38 U.S.C. 1662(a)]

* * * * *

4. In § 21.1041, paragraphs (a)(4), (b), (c), and (d)(2) are revised as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* * * *

(4) The 45 months limitation may be exceeded when the Veterans Administration authorizes an extension under paragraph (d) of this section, or when the Veterans Administration makes no charge against entitlement, as provided in § 21.1045(a) because the veteran, serviceperson or eligible person is pursuing a course at a secondary level under the Program of Special Assistance for the Educationally Disadvantaged. (38 U.S.C. 1662)

(b) *Prior Veterans Administration training.* The period of entitlement for educational assistance when added to education or training received under any laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance, except as provided in paragraph (a)(4) of this section. The Veterans Administration will compute a reduction in the period of entitlement because of prior training as provided in paragraph (c) of this section. (38 U.S.C. 1662)

(c) *Reduction for prior Veterans Administration training.* Where the period of entitlement is subject to reduction by reason of prior training, the Veterans Administration will convert the period remaining to months and days after subtracting the period of prior training. (38 U.S.C. 1795)

(d) *Extension.* * * *

(2) When the period of entitlement ends after more than half the course has been completed the veteran's or eligible person's period of entitlement will be extended—

(i) In a course consisting exclusively of flight training—

(A) To the end of the course or

(B) The additional amount of instruction that $846 will provide effective October 1, 1980 and $888 will provide effective January 1, 1981, whichever is less;

(ii) In a course pursued exclusively by correspondence—

(A) To the end of the course or

(B) The additional amount of instruction that $916 will provide effective October 1, 1980 and $958 will provide effective January 1, 1981, whichever is less;

(iii) In all other schools—

(A) To the end of the course or

(B) For 12 weeks, whichever is less. (38 U.S.C. 1661, 1677(b) 1786(a)]

* * * * *

5. In § 21.1043, paragraph (d) is revised as follows:

§ 21.1043 Extended period of eligibility.

* * * * *

(d) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), the Veterans Administration will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility. (38 U.S.C. 1662)

6. Section 21.1045 is revised as follows:

§ 21.1045 Entitlement charges.

The Veterans Administration will make charges against entitlement only when required by this section. Charges will be based upon the principle that a veteran or eligible person who trains full time for 1 day should be charged 1 day of entitlement. The provisions of this section apply to veterans, eligible persons training under chapter 35, title 38, United States Code, as well as to veterans training under chapter 31, title 38, United States Code who make a valid election under § 21.21 to receive educational assistance allowance equivalent to that paid to veterans training under chapter 34.

(a) *Courses resulting in no entitlement charge.* The Veterans Administration will make no charge against the entitlement of—

(1) An eligible serviceperson who is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235;

(2) A veteran, eligible spouse or surviving spouse who—

(i) On October 1, 1980 was pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235; and

(ii) Has remained continuously enrolled since October 1, 1980, in a course leading to a secondary school diploma or an equivalency certificate.

(3) A veteran, eligible spouse or surviving spouse who—

(i) Is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235; and

(ii) Received educational assistance allowance based upon the tuition and fees charged for the course; or

(4) A veteran, not on active duty, eligible spouse or surviving spouse who is pursuing refresher, remedial or deficiency courses. (38 U.S.C. 1691, 1733)

(b) *Course for which entitlement will be charged.* The Veterans Administration will make a charge against the period of entitlement of—

(1) A veteran or serviceperson for a program consisting of flight training under chapter 34;

(2) A veteran or eligible person for a program of apprenticeship or other on-the-job training under chapter 34 or 35;

(3) A veteran or serviceperson under chapter 34 or a spouse or surviving spouse under chapter 35 who is pursuing a correspondence course; or

(4) A veteran, not on active duty, eligible spouse or surviving spouse who—

(i) Is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235,

(ii) Elects to receive educational assistance allowance at the rate described in § 21.4136(a) or § 21.4137(a), as appropriate, and

(iii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1, 1980, or has not remained continuously enrolled in such a course since October 1, 1980; or

(5) A serviceperson under chapter 34 or an eligible child under chapter 35 who is pursuing a refresher, remedial or deficiency course; or

(6) A veteran, serviceperson or eligible person under either chapter 34 or 35 for the pursuit of any course not described in paragraph (a) of this section. (38 U.S.C. 1661, 1677(b), 1691)

(c) *Determining entitlement charge.* The provisions of this paragraph do not apply to those courses listed in paragraph (a) of this section or to flight training, apprenticeship or other on-job training, correspondence courses, or to courses offered through independent study.

(1) For all other courses the Veterans Administration will make a charge against entitlement—

(i) On the basis of total elapsed time (1 day for each day of pursuit) if the veteran or eligible person is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or eligible person is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) The Veterans Administration will compute elapsed time from the commencing date of enrollment to date of discontinuance. If the veteran or eligible person changes his or her training time after the commencing date of enrollment, the Veterans Administration will—

(i) Divide the enrollment period into separate periods of time during which the veteran's or eligible person's training time remains constant; and

(ii) Compute the elapsed time separately for each time period. (38 U.S.C. 1661)

(d) *Entitlement charge—independent study.* The Veterans Administration will make charges against the entitlement of a veteran or eligible person in the manner described in paragraph (c) of this section, if he or she is pursuing a program of education solely by independent study. However, the computation will always be made as though the veteran's or eligible person's training were one-quarter time. (38 U.S.C. 1682(e))

(e) *Entitlement charge—flight training.* The charge against entitlement for pursuit of a program consisting of flight training shall be 1 month for each—

(1) $302 which is paid to the veteran as an educational assistance allowance after September 30, 1980 and before January 1, 1981 for flight training, and

(2) $317 which is paid to the veteran as an educational assistance allowance after December 31, 1980 for flight training. (38 U.S.C. 1677(b))

(f) *Entitlement charge—apprenticeship or other on-job training.* The charge against entitlement for pursuit of apprenticeship or other on-the-job training program shall be 1 month for each month educational assistance allowance is paid to the veteran or eligible person for the program. If there are deductions from the veteran's or eligible person's educational assistance allowance due to his or her excessive absences, the Veterans Administration will combine the portions of a month for which deductions were made. The Veterans Administration will make no charge against the entitlement for the period of combined deductions. (38 U.S.C. 1787)

(g) *Entitlement charge—correspondence course.* (1) For contracts entered into before January 1, 1973 the charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each $175 paid as educational assistance allowance;

(2) For contracts entered into after December 31, 1972 the charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each—

(i) $220 paid after December 31, 1972 and before September 1, 1974 to a veteran or surviving spouse as an educational assistance allowance,

(ii) $260 paid after August 31, 1974 and before January 1, 1975,

(iii) $270 paid after December 31, 1974 and before October 1, 1976,

(iv) $292 paid after September 30, 1976 and before October 1, 1977,

(v) $311 paid after September 30, 1977 and before October 1, 1980,

(vi) $327 paid after September 30, 1980 and before January 1, 1981, and

(vii) $342 paid after December 31, 1980. (38 U.S.C. 1786(a))

(h) *Overpayment cases.* The Veterans Administration will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived, and is not recovered, or is compromised. (38 U.S.C. 1661)

(1) The charge against entitlement if the overpayment is discharged in bankruptcy or is waived and is not recovered will be at the appropriate rate for the elapsed period covered by the overpayment.

(2) The charge against entitlement if the overpayment is compromised will be determined by:

(i) Subtracting the accepted compromise offer from the total amount of the overpayment,

(ii) Dividing the result obtained in paragraph (h)(2)(i) of this section by the total amount of the overpayment, and

(iii) Multiplying the percentage figure obtained in paragraph (h)(2)(ii) of this section by the amount of the entitlement which represents the whole overpaid period. (38 U.S.C. 1661)

(i) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran is enrolled for the term, quarter or semester. The Veterans Administration will make a charge against entitlement for the entire period of certified enrollment, if the veteran is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions: (38 U.S.C. 1661)

(1) Enrollment is actually terminated;

(2) The veteran cancels his or her enrollment, and does not negotiate an

educational benefits check for any part of the certified period of enrollment;

(3) The veteran interrupts his or her enrollment at the end of any term, quarter, or semester within the certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;

(4) The veteran requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and the Veterans Administration continued payments under an established policy based upon an Executive order of the President or an emergency situation. Whether the veteran negotiated a check for educational benefits for the certified period is immaterial. (38 U.S.C. 1661)

(j) *Accelerated payment—chapters 34 and 35.* The Veterans Administration will make a charge against the entitlement of a veteran or eligible person who receives an accelerated payment at the rate of 1 month for each amount of accelerated payment (exclusive of the matching payment from the State and/or local governmental unit) equal to the full-time monthly rate payable to the veteran or eligible person under § 21.4136(a) at the time he or she applied for an accelerated payment. (38 U.S.C. 1682A, 1738)

(k) *Education loan after otherwise applicable delimiting date—chapter 34 or 35 spouse or surviving spouse.* The Veterans Administration will make a charge against the entitlement of a veteran, spouse or surviving spouse who receives an educational loan pursuant to § 21.4501(c) at the rate of 1 day for each day of entitlement that would have been used had the veteran, spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted. (38 U.S.C. 1662, 1712)

7. In § 21.3032, paragraphs (b) and (c) are revised as follows:

§ 21.3032 Time limits.

* * * * *

(b) *Failure to furnish claim or notice of time limit.* Failure to furnish any form or information concerning the right to file claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions.

(c) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility provided by § 21.3046(d) must be received by the Veterans Administration by the latest of the following dates:

(1) One year from the date on which the spouse's or surviving spouse's original period of eligibility ended.

(2) One year from the date on which the spouse's or surviving spouse's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(3) October 17, 1981. (38 U.S.C. 1712)

8. In § 21.3046, paragraph (c) is revised as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

* * * * *

(c) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii).

(2) If the spouse is enrolled in a school operating on a quarter or semester system, the Veterans Administration will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, the Veterans Administration will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, the Veterans Administration will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of course, or

(ii) The total additional amount of instruction that $916 will provide effective October 1, 1980, or that $958 will provide effective January 1, 1981.

(5) The Veterans Administration will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c).

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) or (d) of this section, as appropriate. (38 U.S.C. 1711(b), 1712(b), 1732, 1786)

* * * * *

9. Sections 21.3300, 21.3301, 21.3302, 21.3303, 21.3304, 21.3305 and 21.3306 are revised as follows:

§ 21.3300 Special restorative training.

(a) *Purpose of special restorative training.* The Veterans Administration may prescribe special restorative training where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible child to pursue a program of education, special vocational program or other appropriate goal. Medical care and treatment or psychiatric treatment are not included. (38 U.S.C. 1740)

(b) *Special restorative training courses.* The Vocational Rehabilitation Board may prescribe for special restorative training purposes courses such as—

(1) Speech and voice correction or retention,

(2) Language retraining,

(3) Speech (lip) reading,

(4) Auditory training,

(5) Braille reading and writing,

(6) Training in ambulation,

(7) One-hand typewriting,

(8) Nondominant handwriting,

(9) Personal, social and work adjustment training,

(10) Remedial reading, and

(11) Courses at special schools for mentally and physically disabled or

(12) Courses provided at facilities which are adapted or modified to meet special needs of disabled students. (38 U.S.C. 1740)

(c) *Duration of special restorative training.* The Veterans Administration may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of $103 per calendar month, effective October 1, 1980, and a monthly payment in excess of $108 per calendar month, effective January 1, 1981. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b), 1742)

(d) *Special restorative training precluded in Veterans Administration facilities.* Special restorative training will not be provided in Veterans Administration facilities. (38 U.S.C. 1743(b))

§ 21.3301 Need.

(a) *Determination of need.* When the case of a handicapped child is referred to the Vocational Rehabilitation Board, because of a request by a parent or guardian or upon recommendation of a

counselor, the board will consider whether—

(1) There exists a handicap which will interfere with pursuit of a program of education;

(2) It is in the best interests of an eligible child to begin special restorative training after his or her 14th birthday;

(3) The period of special restorative training materially will improve the eligible child's ability to—

(i) Pursue a program of education,

(ii) Pursue a program of specialized vocational training,

(iii) Obtain continuing employment in a sheltered workshop, or

(iv) Adjust in his or her family or community; (38 U.S.C. 1741(a))

(4) The special restorative training may be pursued concurrently with a program of education; and

(5) Training will affect adversely the child's mental or physical condition;

(6) The Veterans Administration—

(i) Has considered assistance available under provisions of State-Federal programs for education of handicapped children, and

(ii) Has determined that it is in the child's interest to receive benefits under chapter 35, (38 U.S.C. 1741(a))

(b) *Development and implementation.* When the board decides that special restorative training is needed, a Veterans Administration counseling psychologist in the Vocational Rehabilitation and Counseling Division will prepare an individualized, written rehabilitation plan. The plan will be prepared jointly with the eligible child and parent or guardian. (38 U.S.C. 1741(a))

(c) *Notification of disallowance.* When a parent or guardian has requested special restorative training on behalf of an eligible child, and the board finds that this training is not needed or will not materially improve the child's condition the Veterans Administration will inform the parent or guardian of the finding. (38 U.S.C. 1713)

(d) *Reentrance after interruption.* When the case of an eligible child is referred for consideration of reentrance into special restorative training following an interruption, the board will recommend approval if there is reasonable expectation that the purpose of special restorative training will be accomplished. See § 21.3306. (38 U.S.C. 1740)

§ 21.3302 Agreements.

(a) *Agreements to provide training.* The Veterans Administration may make agreements with public or private educational institutions or others to provide suitable and necessary special restorative training for an eligible child. (38 U.S.C. 1743)

(b) *Tuition charge.* When a customary tuition charge is not applicable, the agreement will include the fair and reasonable amounts which may be charged the parent or guardian for the training provided an eligible child. (38 U.S.C. 1743)

(c) *Content of agreement.* Each agreement will include the same type of information required for special restorative training for disabled veterans under 38 U.S.C. ch. 31, including the requirement that the educational institutions, or others with whom arrangements have been made, report to the Veterans Administration promptly the eligible child's enrollment in, interruption or termination of the course of special restorative training. (38 U.S.C. 1743)

§ 21.3303 · Extent of training.

(a) *Length of special restorative training.* Ordinarily, special restorative training may not exceed 12 months. When the Vocational Rehabilitation Board determines that more than 12 months is necessary, it will refer the program to the Director, Vocational Rehabilitation and Counseling Service for prior approval. Where the plan for a program of special restorative training itself (not in combination with the program of education) or special vocational training will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to the Director, Vocational Rehabilitation and Counseling Service for approval. (38 U.S.C. 1743(b))

(b) *Age limitation.* No eligible child may receive special restorative training after reaching age 31. (38 U.S.C. 1712)

(c) *Full-time training.* An eligible child will pursue special restorative training on a full-time basis.

(1) Full-time training requires training for—

(i) That amount of time per week which commonly is required for a full-time course at the educational institution when, based on medical findings, the Veterans Administration determines that the eligible child's physical or mental condition permits training for that amount of time, or

(ii) The maximum time per week permitted by the child's disability, as determined by the Veterans Administration, based on medical findings, if the disability precludes the weekly training time stated in paragraph (c)(1)(i) of this section.

(2) If the hours per week that can reasonably be devoted to restorative training will not of themselves equal the time required by paragraph (c)(1) of this section, the course will be supplemented with subject matter which will contribute toward the objective of the program of education. (38 U.S.C. 1742(c))

§ 21.3304 Assistance during training.

(a) *General.* A vocational rehabilitation specialist will provide the professional and technical assistance needed by the eligible child in pursuing special restorative training. The assistance will be timely, sustained and personal. (38 U.S.C. 1741)

(b) *Adjustments in the training situation.* The vocational rehabilitation specialist must be continually aware of the eligible child's progress. At frequent intervals he or she will determine whether the eligible child is progressing satisfactorily. When the vocational rehabilitation specialist determines that adjustments are needed in the course or in the training situation, he or she will act immediately to bring about the adjustments in accordance with the following:

(1) When the eligible child or his or her instructor indicates dissatisfaction with elements of the program, the vocational rehabilitation specialist, through personal discussion with the eligible child or his or her instructor or both, will, if possible, correct the difficulty through such means as making minor adjustments in the course or by persuading the eligible child to give more attention to performance.

(2) When major difficulties cannot be corrected, the vocational rehabilitation specialist will prepare a report of pertinent facts and recommendations for action by the Vocational Rehabilitation Board.

(3) Action will be taken to terminate the eligible child's course at the proper time so that his or her entitlement may be conserved when the vocational rehabilitation specialist determines that—

(i) The eligible child is progressing much faster than anticipated, and

(ii) The eligible child's course may be terminated with satisfactory results before the time originally planned. (38 U.S.C. 1741)

§ 21.3305 "Interrupted" status.

(a) *Special restorative training should be uninterrupted.* An eligible child once entered into special restorative training should pursue his or her course to completion without interruption. Wherever possible, continuous training shall be provided for each eligible child, including training during the summer, except where, because of his or her physical condition or other good reason,

it would not be to his or her best interest to pursue training. As long as the eligible child is progressing satisfactorily toward overcoming his or her handicap, the eligible child will be continued in his or her course of training without accounting for days of nonattendance within the authorized enrollment. (38 U.S.C. 1741)

(b) *Interrupting special restorative training.* Special restorative training will be interrupted as necessary under the following conditions:

(1) During summer vacations or periods when no instruction is given before and after summer sessions.

(2) During a prolonged period of illness or medical infeasibility.

(3) When the eligible child voluntarily abandons special restorative training.

(4) When the eligible child fails to make satisfactory progress in the special restorative training course.

(5) When the eligible child is no longer acceptable to the institution because of failure to maintain satisfactory conduct or progress in accordance with the rules of the institution.

(6) When the eligible child's progress is materially retarded because of his or her negligence, lack of application or misconduct. (38 U.S.C. 1741, 1743(b))

§ 21.3306 Reentrance after interruption.

When a course of special restorative training has been interrupted and the eligible child presents himself or herself for reentrance, the Veterans Administration will act as follows:

(a) *Action by a vocational rehabilitation specialist.* A vocational rehabilitation specialist will approve reentrance when special restorative training was interrupted—

(1) For a scheduled vacation period, such as a summer break,

(2) For a short period of illness, or

(3) For other reasons which permit reentrance in the same course of special restorative training without corrective action. (38 U.S.C. 1743(b))

(b) *Referral to the Vocational Rehabilitation Board.* (1) The vocational rehabilitation specialist will refer the eligible child's case to the Vocational Rehabilitation Board when special restorative training was interrupted—

(i) By reason of failure to maintain satisfactory conduct or progress, or

(ii) For any other reason which requires corrective action, such as change of place of training, change of course, personal adjustment, etc.

(2) If the Vocational Rehabilitation Board determines that the conditions which caused the interruption can be overcome, it will recommend the necessary adjustment.

(3) The Vocational Rehabilitation Board will deny reentrance when—

(i) All efforts by the board to effect proper adjustment in the case fail, and

(ii) The board determines that adjustment cannot be made. (38 U.S.C. 1741, 1743(b))

10. Section 21.3307 is added to read as follows:

§ 21.3307 "Discontinued" status.

(a) *Placement in "discontinued" status.* The Veterans Administration will place an eligible child in "discontinued" status when the Vocational Rehabilitation Board denies reentrance of the eligible child into special restorative training. (38 U.S.C. 1743(b))

(b) *Notification.* In any case of discontinuance the Veterans Administration will:

(1) Notify the eligible child's parent or guardian of the action taken, and

(2) Inform him or her of the eligible child's potential right to a program of education (38 U.S.C. 1743(b)).

(c) *Effect of discontinuance.* An eligible child who has been placed in "discontinued" status is precluded from any further pursuit of special restorative training until a Veterans Administration counseling psychologist in the Vocational Rehabilitation and Counseling Division determines that the cause of the discontinuance has been removed (38 U.S.C. 1743(b)).

11. In § 21.3333, paragraphs (a), (b) and (c)(2) are revised as follows:

§ 21.3333 Rates.

(a) *Rates.* (1) Special training allowance is payable at the following monthly rate effective October 1, 1980 except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training	$327	If costs for tuition and fees average in excess of $103 per month, rate may be increased by such amount in excess of $103. (38 U.S.C. 1742)

(2) Special training allowance is payable at the following monthly rate effective January 1, 1981 except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training	$342	If costs for tuition and fees average in excess of $108 per month, rate may be increased by such amount in excess of $108. (38 U.S.C. 1742)

(b) *Accelerated charges.* (1) Effective October 1, 1980 the Veterans Administration may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each $10.92 that the special training allowance exceeds the basic monthly rate of $327.

(2) Effective January 1, 1981 the Veterans Administration may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each $11.44 that the special training allowance exceeds the basic monthly rate of $342.

(3) The Veterans Administration will:

(i) Charge fractions of more than one-half day as 1 day;

(ii) Disregard fractions of one-half or less; and

(iii) Record charges when the eligible child is entered into training (38 U.S.C. 1742).

(c) *Payments in Philippine pesos.*

* * *

(2) The eligible child is pursuing training at an institution located in the Republic of the Philippines (38 U.S.C. 1732, 1742, 1765).

12. Section 21.4001 is amended as follows:

(a) By removing the reference "Part 18 of this chapter" and inserting "§§ 18.1 through 18.13 of this chapter" in the last sentence of paragraph (d).

(b) By revising paragraphs (a), (b) and (c) as follows:

§ 21.4001 Delegations of authority.

(a) Except as otherwise provided, authority is delegated to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Education Service designated by him or her to make findings and decisions under 38 U.S.C. chs. 34, 35, and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs (38 U.S.C. 212(a)).

(b) Authority is delegated to the Chief Benefits Director and the Director, Education Service to enter into agreements for the reimbursement of State approving agencies under § 21.4153 (38 U.S.C. 212(a)).

(c) Authority is delegated to the Director, Education Service, to exercise the functions required of the Administrator for:

(1) Waiver of penalties for conflicting interests as provided by § 21.4005;

(2) Actions otherwise required of State approving agencies under § 21.4150(c);

(3) Approval of courses under § 21.4250(c). (38 U.S.C. 212(a))

* * * * *

§21.4002 [Amended]

12a. Section 21.4002 is amended by removing the references "§§ 19.153 and 19.154 of this chapter" and inserting "§§ 19.192 and 19.193 of this chapter" in paragraph (a).

13. In § 21.4006, paragraphs (a)(2), (b) and (c) are revised and a title is added to paragraph (a) as follows:

§ 21.4006 False or misleading statements.

(a) *Payments may not be based on false statements.* * * *

(2) When the Veterans Administration discovers that a certification or claim is false after it has released payment, the Veterans Administration will establish an overpayment for only that portion of the claim to which the claimant was not entitled (38 U.S.C. 1780).

(b) *Effect of false statements on subsequent payments.* A claimant's false or misleading statements are not a bar to payments based on further training (38 U.S.C. 1780).

(c) *Forfeiture.* The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of § 21.4007 (38 U.S.C. 3503).

§ 21.4007 [Amended]

13a. Section 21.4007 is amended by removing the references "§§ 19.1, 19.2 and 19.3 of this chapter" and inserting "§§ 10.1, 19.2 and 19.5 of this chapter."

14. Section 21.4008 is revised to read as follows:

§ 21.4008 Prevention of overpayments.

When approval of a course may be withdrawn, and overpayments may exist or be created, the Veterans Administration may suspend further payments to veterans or eligible persons enrolled in the school until the question of withdrawing approval is resolved. See § 21.4134 (38 U.S.C. 1790(b)).

15. In § 21.4009, paragraphs (a) and (b) are revised as follows:

§ 21.4009 Overpayments—waiver or recovery.

(a) *General.* (1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Veterans Administration determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by §§ 21.4203 and 21.4204, excessive absences from a course or discontinuance or interruption of a course by a veteran or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Veterans Administration may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Veterans Administration may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Veterans Administration determines the false certification or misrepresentation resulted from an administrative error or a misstatement of fact and that no criminal or civil action is warranted.

(4) If the Veterans Administration recovers any part of the overpayment from the educational institution, it may reimburse the educational institution if the Veterans Administration subsequently collects the overpayment from a veteran or eligible person. The reimbursement will be made when the total amount of the overpayment collected from the veterans, eligible persons and the educational institution exceeds the total amount for which the educational institution is liable and will be equal to the excess.

(5) This paragraph does not preclude the imposition of any civil or criminal liability under this or any other law. (38 U.S.C. 1785)

(b) *Reporting.* (1) If a school is required to make periodic or other certifications, the Veterans Administration may consider the following in determining whether a school in potentially liable for an overpayment:

(i) The school's failure to report, or to report timely facts which resulted in an overpayment, or

(ii) The school's submission of an incorrect certification as to fact.

(2) In either instance the Veterans Administration will consider other pertinent factors such as:

(i) Allowing for occasional clerical error or occasional administrative error;

(ii) The school's past reliability in reporting;

(iii) The adequacy of the school's reporting system; and

(iv) The extent of noncompliance with reporting requirements. (38 U.S.C. 1785)

* * * * *

16. Section 21.4020 is revised as follows:

§ 21.4020 Two or more programs.

(a) *Limit on training under two or more programs.* The aggregate period for which any person may receive assistance under two or more of the following laws may not exceed 48 months (or the part-time equivalent):

(1) Part VII or VIII, Veterans Regulations numbered 1(a), as amended;

(2) Title II of the Veterans' Readjustment Assistance Act of 1952;

(3) The War Orphans' Educational Assistance Act of 1956;

(4) 39 U.S.C. chs. 32, 34, 35 and 36 and the former chapter 33 (38 U.S.C. 1795(a)).

(b) *Limit on combining assistance received under Chapter 31 with assistance under another program.* No person may receive assistance under chapter 31, title 38, United States Code in combination with any provisions of law listed in paragraph (a) of this section in excess of 48 months (or the part-time equivalent) unless the Veterans Administration determines that additional months of benefits under chapter 31 are necessary to accomplish the purpose of the veteran's rehabilitation program (38 U.S.C. 1795(b)).

17. Section 21.4022 is amended as follows:

A. By removing the words "his" and "he" and inserting the words "his or her" and "he or she" respectively in the first sentence of paragraph (a).

B. By revising paragraph (b) as set forth below:

§ 21.4022 Nonduplication—38 U.S.C. Chs. 31, 34, and 35.

* * * * *

(b) *Prior training.* If a veteran, who is also an eligible person, has received educational assistance under chapter 34 or 35, the program previously pursued will be utilized to the fullest extent practicable in determining the character and duration for which enrollment may be approved under the other chapter (38 U.S.C. 1671, 1721).

18. Section 21.4025 is amended as follows:

A. By removing the word "him" and inserting the words "him or her" in paragraphs (a)(2) and (b)(3).

B. By removing the word "he" and inserting the words "he or she" in paragraph (b)(1).

C. By revising paragraph (b)(2) as follows: the introductory text of paragraph (b) is reprinted for the convenience of the reader:

§ 21.4025 Nonduplication—Federal programs.

* * * * *

(b) *Chapter 34.* Payment of educational assistance allowance is prohibited to an otherwise eligible veteran:

* * * * *

(2) For a unit course or courses which are being paid for in whole or in part by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or (38 U.S.C. 1781)

* * * * *

19. In § 21.4102, paragraph (a) is revised as follows:

§ 21.4102 Requirement—38 U.S.C. Chapter 35.

(a) *Child.* (1) Counseling is required for an eligible child if:

(i) The eligible child may require specialized vocational or special restorative training, or

(ii) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday nor completed secondary schooling (See § 21.3040(a)).

(2) In all other cases the counseling psychologist will assist in preparing an educational plan only of the eligible child, or his or her parent or guardian requests assistance (38 U.S.C. 1720, 1736, 1741, 1761).

* * * * *

20. Section 21.4105 is revised as follows:

§ 21.4105 Special training—38 U.S.C. Chapter 35.

(a) *Initial counseling.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division will counsel a handicapped person before a case is considered by the Vocational Rehabilitation Board (established under § 21.715 to determine need for a course of specialized vocational training or special restorative training (38 U.S.C. 1736).

(b) *Counseling after special restorative training.* When an eligible child completes or discontinues a course of special restorative training without having selected an objective and a program of education, a counseling psychologist in the Vocational Rehabilitation and Counseling Division will provide additional counseling to assist the child in selecting a program of education (38 U.S.C. 1761).

21. Section 21.4130 is revised as follows:

§ 21.4130 Educational assistance allowance.

(a) *Payments of educational assistance allowance.* The Veterans Administration will pay educational assistance allowance at the rate specified in §§ 21.4136 or 21.4137 while the veteran or eligible person is pursuing a program of education or training (38 U.S.C. 1682, 1691, 1732, 1780(a)).

(b) *Excessive absences cause reduced payments.* Except for apprenticeship and other on-the-job training programs, the Veterans Administration will make no payment for excessive absences (as determined under § 21.4205(b) from a course not leading to a standard college degree. (See § 21.4136(i) and § 21.4137(f) for proportionate reduction where less than 120 hours are completed during a month in apprenticeship and other on-job training programs.) (38 U.S.C. 1780(a)).

(c) *No payment for excessive training.* (1) The Veterans Administration will make no payment for:

(i) Training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency or Veterans Administration; or

(ii) Lessons completed in a correspondence course in excess of the number approved by the State approving agency.

(2) A school's standards of progress may permit a student to repeat a course or portion of a course in which he or she has done poorly. The Veterans Administration considers the repeated courses to be part of the program of education. The Veterans Administration will make no payment for:

(i) Flight training beyond the approved length of the course or beyond repeated portions of the approved course permitted by the flight school's approved standards of progress; or

(ii) Training in any course if the training is not part of the veteran's or eligible person's program of education (38 U.S.C. 1652).

(d) *Commencing date.* The commencing date will be the date of entrance or reentrance into a course as determined under § 21.4131 (38 U.S.C. 1681(a), 1780(a)).

(e) *Ending date.* The ending date will be the earliest of the following dates:

(1) The ending date of the course or period of enrollment as certified by the school.

(2) The ending date of:

(i) The veteran's eligibility as determined by §§ 21.1041, 21.1042, and 21.1043, or

(ii) The ending date of the eligible person's eligibility as determined under §§ 21.3041, 21.3042, and 21.3046.

(3) The ending date specified in § 21.4135 (38 U.S.C. 1662(a), 1681(a), 1780(a)).

(f) *Final payment.* The Veterans Administration may withhold final payment until the Veterans Administration receives proof of continued enrollment and adjusts the veteran's or eligible person's account (38 U.S.C. 1780).

22. In § 21.4131, the introductory text is reprinted for the convenience of the reader paragraphs (b) and (g) are revised and paragraphs (h) and (i) are added so that the added and revised material reads as follows:

§ 21.4131 Commencing dates.

The commencing date of an award or increased award of educational assistance allowance will be determined under this section.

* * * * *

(b) *Certification by school; course leads to standard college degree.* (1) When the student enrolls in any course or subject other than one described in paragraph (b) (2) and (3) of this section, the commencing date of the award or increased award of educational assistance allowance will be:

(i) The date of registration in the term, quarter or semester.

(ii) The date of reporting when the student is required by published standards to report in advance of registration.

(2) When the student enrolls in a resident course or subject and the first day of classes does not occur before the end of the first regularly scheduled calendar week of classes during a term, quarter or semester, the commencing date of the award or increased award of educational assistance allowance will be the first day of classes.

(3) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or increased award of educational assistance allowance will be the first day of classes (38 U.S.C. 1681(a), 1780(a)).

* * * * *

(g) *Correction of military records (§§ 21.1042(b), 21.3042(b)).* Eligibility of a veteran may arise as the result of correction or modification of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal under 10 U.S.C.

1553, or other competent military authority. In these cases the commencing date of educational assistance allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department (38 U.S.C. 1662(b)).

(h) *Individuals in a penal institution.* If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.4136 (n), (o), (p), (q) or (r) of § 21.4137 (k) or (l), the rate will be increased or benefits will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program, or

(2) The date of the release from prison, jail or penal institution. (38 U.S.C. 1682(g), 1732, 1780(a)).

(i) *Individuals in a work-release program or halfway house.* If a veteran or eligible person is being paid a reduced rate of educational assistance allowance under §§ 21.4136(r) or 21.4137(l) because he or she is in a work-release program or halfway house because of a conviction for a felony, the rate will be increased to the monthly rate otherwise applicable effective the earlier of the following dates:

(1) The date on which the Federal Government or a State or local government stops paying all of his or her living expenses, or

(2) The date of the release or parole of the veteran or eligible person from the halfway house or work-release program (38 U.S.C. 1682(g), 1732, 1780(a)).

§ 21.4131 [Amended]

23. Immediately following § 21.4131 the cross reference "Special restorative training. See § 21.3331" is removed.

24. In § 21.4135, paragraphs (m), (s)(3), and (x) are added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(m) *Incarceration in prison or jail.* (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate—

(i) Under § 21.4136 (n), (p) or (q) or § 21.4137(k), or

(ii) Because he or she is incarcerated for conviction of a felony as provided in §§ 21.4136 (o) or (r) and 21.4137 (j) or (l).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program;

(ii) The date the veteran or eligible person is incarcerated in prison or jail; or

(iii) The commencing date of the award as determined by § 21.4131. (38 U.S.C. 1682(g), 1732(e), 1780(a))

* * * * *

(s) *Reduction in rate of pursuit of course (§ 21.4270).* * * *

(3) An individual, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4138(f) are met. If those requirements are not met, the Veterans Administration will reduce the individual's benefits effective the date the subject or subjects were completed (38 U.S.C. 1780).

* * * * *

(x) *Individuals in a work-release program or halfway house.* If a veteran or eligible person becomes restricted to payment at a reduced rate of educational assistance under § 21.4136(r) or § 21.4137(l), because he or she is in a work-release program or halfway house following a felony conviction, the reduced rate will be effective the latest of the following dates:

(1) The date on which he or she was placed in the work-release program or halfway house,

(2) The date the Federal Government or State or local government began defraying all of his or her living expenses, or

(3) The commencing date of his or her award as determined by § 21.4131 (38 U.S.C. 1682(g), 1732, 1780(g)).

25. In § 21.4136, paragraphs (a), (c), (h) and (j)(1) are revised, paragraphs (l), (m), (n), (o), (p), (q), (r), (s) and (t) are added and paragraph (j)(4) is removed. The added and revised material reads as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* (1) Educational assistance allowance is payable at the following monthly rates effective October 1, 1980:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependents
Institutional:				
Full time	$327	$369	$443	$27
¾ time	245	292	332	20
½ time	164	195	222	14
Less than ½ but more than ¼ time[1]	[2] 164			
¼ time or less[1]	[2] 82			
Cooperative, other than farm cooperative (full time only)	264	309	351	21
Apprentice or on-job (full time only but see footnote [3] below.) Payment designated training assistance allowance:				
First 6 months	237	267	291	13
Second 6 months	177	207	232	13
Third 6 months	119	148	172	13
Fourth 6 months and succeeding periods	59	88	113	13
Correspondence	(4)	(4)	(4)	(4)
Flight training	(5)	(5)	(5)	(5)
Farm Cooperative:				
Full time	264	309	351	20
¾ time	198	232	263	15
½ time	132	155	176	10

[1] If a veteran under chapter 34 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $164 or $82, as appropriate, per month if the maximum allowance is not initially authorized.

[2] See paragraph (b) of this section.

[3] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[4] 70 percent of the established charge for number of lessons completed by the veteran and serviced by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran, whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges. Enrollments after December 31, 1972 and before September 2, 1980 will receive 90 percent of the established charges provided the student remains continuously enrolled in his or her program. The Veterans Administration considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g).

[5] 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. If a veteran or serviceperson enrolls in a flight course before September 2, 1980, he or she will receive 90 percent of the established charge for the course, provided he or she remains continuously enrolled in his or her program. The Veterans Administration will consider the continuity of enrollment broken when the veteran or serviceperson receives no flight training for a period of 6 or more consecutive months. Allowance paid monthly based on actual flight training received. See § 21.1045(e). (38 U.S.C. 1677, 1682, 1786, 1787.)

(2) Educational assistance allowance is payable at the following monthly rates effective January 1, 1981:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	$342	$407	$464	$29
¾ time	257	305	348	22
½ time	171	204	232	15
Less than ½ but more than ¼ time [3]	[4] 171	—	—	—
¼ time or less [3]	[4] 86	—	—	—
Cooperative, other than farm cooperative (full time only)	276	323	367	21
Apprentice or on-job (full time only but see footnote 3 below). Payment designated training assistance allowance:				
First 6 months	249	279	305	13
Second 6 months	186	217	243	13
Third 6 months	124	155	180	13
Fourth 6 months and succeeding periods	62	92	119	13
Correspondence	(5)	(5)	(5)	(5)
Flight training	(6)	(6)	(6)	(6)
Farm Cooperative:				
Full time	276	323	367	21
¾ time	207	242	275	16
½ time	138	162	184	11

[1] If a veteran under chapter 34 receiving benefits under § 21.4260(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $171 or $86, as appropriate, per month if the maximum allowance is not initially authorized.
[2] See paragraph (b) of this section.
[3] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.
[4] 70 percent of the established charge for number of lessons completed by the veteran and serviced by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran, whichever is the lesser. Enrollments before January 1 1973 will receive 100 percent of the established charges. Enrollments after December 31, 1972 and before September 2, 1980 will receive 90 percent of the established charges provided the student remains continuously enrolled in his or her program. The Veterans Administration considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g).
[5] 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. If a veteran or serviceperson enrolls in a flight course before September 2, 1980, he or she will receive 90 percent of the established charge for the course, provided he or she remains continuously enrolled in his or her program. The Veterans Administration will consider the continuity of enrollment broken when the veteran or serviceperson receives no flight training for a period of 6 or more consecutive months. Allowance paid monthly based on actual flight training received. See § 21.1045(e). (38 U.S.C. 1677, 1682, 1786, 1787)

* * * * *

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the lesser of the following rates:

(1) The monthly rate of the cost of the course as specified in paragraph (b) of this section, or

(2) The appropriate rate from this table:

Measurement	Rates effective Oct. 1, 1980	Rates effective Jan. 1, 1981
Full time	$327	$342
¾ time	245	257
½ time	164	171
Less than ½, but more than ¼ time	164	171
¼ time or less	82	86

(38 U.S.C. 1682)

* * * * *

(h) *Payment.* (1) The Veterans Administration will pay educational assistance allowance in a lump sum for an entire term, quarter or semester at the rates specified in paragraphs (b) and (c) of this section to or on behalf of a serviceperson who—

(i) Is training on a less than half-time basis, and

(ii) Is enrolled in an institution operating on a term, quarter or semester basis.

(2) The Veterans Administration will make these payments during the month immediately following the month in which the Veterans Administration receives certification from the educational institution that the serviceperson has enrolled in and is pursuing a program at the institution. (38 U.S.C. 1780(d)

* * * * *

(j) *Advance payment.* (1) *Eligibility.* The Veterans Administration shall pay educational assistance allowance at the rates specified in paragraph (a) of this section to an eligible veteran, or serviceperson on active duty enrolled in an approved educational institution on a half-time or more basis. (38 U.S.C. 1780)

* * * * *

(l) *Courses leading to a secondary school diploma or equivalency certificate.* (1) The monthly rate of educational assistance allowance payable to a serviceperson enrolled in a course leading to a secondary school diploma or an equivalency certificate shall be the rate specified in paragraph (c) of this section.

(2) The monthly rate of educational assistance allowance payable to a veteran, not on active duty, who is enrolled in a course leading to a secondary school diploma or equivalency certificate shall be determined as follows:

(i) The monthly rate shall be the rate for institutional training stated in paragraph (a) of this section if—

(A) The veteran was enrolled in the course on October 1, 1980, and

(B) The veteran has remained continuously enrolled after October 1, 1980 in courses leading to a secondary school diploma or an equivalency certificate.

(ii) If the veteran's enrollment does not meet the requirements of paragraph (1)(2)(i) of this section, the veteran may elect to receive either of the following sets of monthly rates:

(A) The first set is either the monthly rate of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program, or the monthly rate for institutional training found in paragraph (a) of this section, whichever is less.

(B) The second set of monthly rates is the monthly rate for institutional training found in paragraph (a) of this section. See § 21.1045 for the way in which this election will affect the charge against the veteran's entitlement. (38 U.S.C. 1691)

(m) *Incarcerated veterans—general.* Notwithstanding the provisions of paragraphs (a) and (c) of this section, some incarcerated veterans and servicepersons may have their educational assistance allowance terminated or reduced. (38 U.S.C. 1682(g), 1780(a))

(n) *No educational assistance allowance for some incarcerated servicepersons.* As with servicepersons who are not incarcerated, the Veterans Administration will not pay educational assistance allowance to an incarcerated serviceperson enrolled in a course for which there are no tuition and fees. Furthermore, effective October 1, 1980, the Veterans Administration will not pay educational assistance allowance to a serviceperson who—

(1) Is enrolled in a course where his or her tutition and fees are being paid for by a Federal program (other than one administered by the Veterans

Administration) or by a State or local program, and

(2) Either—

(i) Is incarcerated in a Federal, State of local prison or jail for reasons other than conviction of a felony, or

(ii) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and has incurred no expenses for supplies, books or equipment. (38 U.S.C. 1682(g), 1780(a))

(o) *No educational assistance allowance for some incarcerated veterans.* (1) *Other than conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) *Conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to a veteran who—

(i) Either—

(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and is having all of his or her living expenses defrayed by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) Either—

(A) Is pursuing the course on a less than half-time basis, or

(B) Is incurring no charge for the books, supplies and equipment necessary for the course. (38 U.S.C. 1682(g), 1780(a))

(p) *Reduced educational assistance allowance for some incarcerated servicepersons.* (1) Effective October 1, 1980, the Veterans Administration will pay reduced educational assistance allowance to a serviceperson who—

(i) Is incarcerated in a Federal, State or local prison or jail for reasons other than a felony conviction, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for in part by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) The monthly rate of educational assistance allowance payable to a serviceperson described in paragraph (p)(1) of this section shall equal the lesser of the following:

(i) The monthly rate of the tuition and fees being charged for the course less the monthly rate of the portion of the tuition and fees being paid for by the Federal, State or local program, or

(ii) The monthly rate found in paragraph (c)(2) of this section.

(3) Effective October 1, 1980, the Veterans Administration will pay a reduced education assistance allowance to a serviceperson who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(4) The monthly rate of educational assistance allowance payable to a serviceperson described in paragraph (p)(3) of this section shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees paid by the serviceperson plus the monthly rate of the cost of books, supplies and equipment paid by the serviceperson;

(ii) The monthly rate of the portion of the tuition and fees paid by the serviceperson plus the monthly rate of the portion of the tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in paragraph (c)(2) of this section. (38 U.S.C. 1682(g), 1780(a).)

(q) *Reduced educational assistance allowance for some incarcerated veterans—no felony conviction.* (1) The Veterans Administration will pay reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than conviction of a felony, and

(ii) Is enrolled in a course where the tuition and fees are being paid for in part by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) The monthly rate of educational assistance allowance payable to such a veteran shall be determined as follows:

(i) If the monthly rate of the tuition and fees less the monthly rate of that portion of the tuition and fees paid by the government program exceeds the rate found in paragraph (a) of this section, the monthly rate payable is the rate found in paragraph (a) of this section.

(ii) If the monthly rate of the tutition and fees less the monthly rate of that portion of the tuition and fees paid by the government program is less than the rate found in paragraph (a) of this section, the monthly rate payable is the monthly rate of the tuition and fees less the monthly rate of the portion of the tuition and fees paid by the government program. (38 U.S.C. 1780(a))

(r) *Reduced educational assistance allowance for some incarcerated veterans—felony conviction.* (1) The Veterans Administration will pay a reduced educational assistance allowance to a veteran who—

(i) Either—(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and all living expenses are defrayed by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which the veteran pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by the Veterans Administration) or State or local program pays all the charges for tuition and fees, but which requires the veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such a veteran who is pursuing the course on a half-time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that the veteran must pay plus the monthly rate of the charges to the veteran for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate stated in paragraph (a) of this section for a veteran with no dependents.

(3) The monthly rate of educational assistance allowance payable to such a veteran who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate stated in paragraph (a) of this section. (38 U.S.C. 1682(g))

(s) *Payment for independent study.* The Veterans Administration shall pay to a veteran who is pursuing only independent study under chapter 34, title 38, United States Code, an educational assistance allowance based on the training time determined in § 21.4272(h) at the rate prescribed in paragraphs (a) and (b) of this section. (38 U.S.C. 1682)

(t) *Payment for independent study-resident training.* A veteran who is pursuing independent study-resident training under chapter 34, title 38, United States Code, shall be paid an educational assistance allowance based on the training time determined in § 21.4272(i) at the institutional rate prescribed in paragraph (a) of this section. (38 U.S.C. 1682)

28. In § 21.4137, paragraphs (a) is revised and paragraphs (i), (j), (k), (l), (m), (n) and (o) are added so that the added and revised material reads as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates:

Type of courses	Monthly rate effective October 1, 1980	Monthly rate effective January 1, 1981
Institutional:		
Full time	$327	$342
¾ time	245	257
½ time	164	171
Less than ½ but more than ¼ time[3]	164	171
¼ time or less[3]	82	86
Cooperative (other than farm cooperative full time only)	264	276
Apprentice or On-Job (full time only but see footnote[1] below) Payment designated Training Assistance Allowance:		
First 6 months	237	249
Second 6 months	177	186
Third 6 months	119	124
Fourth 6 months and succeeding periods	59	62
Farm Cooperative:		
Full time	264	276
¾ time	198	207
½ time	132	138
Correspondence	([2])	([2])

[1] See footnote [3] of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[2] 70 percent of established charge for number of lessons completed by eligible spouse or surviving spouse and serviced by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse, whichever is the lesser. Eligible spouses or surviving spouse, who enroll before September 2, 1980 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. The Veterans Administration considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons. Allowance paid quarterly. (38 U.S.C. 1734, 1786)

[3] If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $164 or $82 as appropriate per month, effective October 1, 1980, and $171 or $86 as appropriate per month, effective January 1, 1981 if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3))

* * * * *

(i) *Incarcerated eligible persons—general.* Notwithstanding the provisions of paragraph (a) of this section, some incarcerated eligible persons may have their educational assistance allowance eliminated or reduced. (38 U.S.C. 1732(e), 1780(a))

(j) *No educational assistance allowance for some incarcerated eligible persons*—(1) *Other than conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to an eligible person who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than for conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) Which has tuition and fees that are being paid for by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) *Conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to an eligible person who—

(i) Either—

(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and all living expenses are defrayed by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) Either

(A) Is pursuing the course on a less than half-time basis, or

(B) Is incurring no charge for the books, supplies and equipment necessary for the course. (38 U.S.C. 1732(e), 1780(a))

(k) *Reduced educational assistance allowance for some incarcerated eligible persons—no felony conviction.* (1) The Veterans Administration will pay reduced educational assistance allowance to an eligible person who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than conviction of a felony, and

(ii) Is enrolled in a course where the tuition and fees are being paid in part by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) The monthly rate of educational assistance allowance payable to such an eligible person shall be determined as follows:

(i) If the monthly rate of the cost of the tuition and fees does not exceed the monthly rate found in paragraph (a) of this section, then the monthly rate of educational assistance allowance payable is the monthly rate found in paragraph (a) of this section less the monthly rate of that portion of the tuition and fees paid by the Federal, State or local government program.

(ii) In all other cases the monthly rate of educational assistance allowance shall be the lesser of the following:

(A) The monthly rate found in paragraph (a) of this section, or

(B) The monthly rate of the tuition and fees being charged for the course less the monthly rate of the portion of the tuition and fees being paid by the Federal, State or local government program. (38 U.S.C. 1780(a))

(l) *Reduced educational assistance allowance for some incarcerated eligible persons—felony conviction.* (1) The Veterans Administration will pay a reduced educational assistance allowance to an eligible person who—

(i) Either—

(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and is having all of his or her living expenses paid by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which there are some charges for tuition or fees which the eligible person must pay, or

(B) That requires supplies, books or equipment for which the eligible person must pay, or

(C) Both, and

(iii) Is pursuing the course on a half-time or greater basis.

(2) The monthly rate of educational assistance allowance payable to such an eligible person shall equal the lesser of the following:

(i) The monthly rate of tuition and fees charged for the course plus the monthly rate of the cost of necessary supplies, books and equipment, or

(ii) The monthly rate stated in paragraph (a) of this section. (38 U.S.C. 1732(e))

(m) *Courses leading to a secondary school diploma or equivalency certificate.* The monthly rate of educational assistance allowance payable to an eligible spouse or surviving spouse enrolled in a course leading to a secondary school diploma or equivalency certificate shall be as follows:

(1) The monthly rate shall be the rate for institutional training stated in paragraph (a) of this section if—

(i) The eligible spouse or surviving spouse was enrolled in the course on October 1, 1980, and

(ii) The eligible spouse or surviving spouse has remained continuously enrolled after October 1, 1980 in courses leading to a secondary school diploma or an equivalency certificate.

(2) If the eligible spouse's enrollment does not meet the requirements of paragraph (m)(1) of this section, the eligible spouse may elect to receive either of the following sets of monthly rates:

(i) The first set is either—

(A) The monthly rate of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program, or

(B) The monthly rate for institutional training found in paragraph (a) of this section, whichever is less.

(ii) The second set of monthly rates is the monthly rate for institutional training found in paragraph (a) of this section. See § 21.1045 for the way in which this election will affect the charge against the eligible spouse's or surviving spouse's entitlement. (38 U.S.C. 1691, 1733)

(n) *Payment for independent study.* The Veterans Administration shall pay to an eligible person pursuing only independent study under chapter 35, title 38, United States Code, an educational assistance allowance based on the training time determined in § 21.4272(h) at the rate prescribed in paragraphs (a) and (b) of this section. (38 U.S.C. 1732)

(o) *Payment for independent study-resident training.* An eligible person pursuing independent study-resident training under chapter 35, title 38, United States Code, shall be paid an educational assistance allowance based on the training time determined in § 21.4272(i) at the rate prescribed in paragraph (a) of this section. (38 U.S.C. 1732)

27. In § 21.4138, paragraphs (a) and (b) are revised as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(a) *Lump sum—in advance.* (1) A certification by an institution that the eligible individual has enrolled will be sufficient to release an advance lump-sum payment to or on behalf of the individual for the entire quarter, semester or term if—

(i) The individual is a serviceperson on active duty training on a half-time or greater basis, and

(ii) The individual has requested an advance payment.

(2) The Veterans Administration will make an advance lump-sum payment no earlier than 30 days prior to the date the individual's program of training is to begin. (38 U.S.C. 1780(d))

(b) *Lump-sum—in month following.* Such a certification by an institution will be sufficient to release the payment of a lump sum to or on behalf of the individual for the entire quarter, semester or term in the month following receipt of the certification by the Veterans Administration provided the individual is:

(1) A serviceperson on active duty training on a less than half-time basis,

(2) A veteran or other eligible person not on active duty and training on a less than half-time basis,

(3) A serviceperson on active duty and training on a half-time or greater basis, who has not requested an advance payment. (38 U.S.C. 1691, 1780)

* * * * *

28. Section 21.4139 is revised as follows:

§ 21.4139 Payee.

(a) *Educational assistance allowance—Chapter 34.* The Veterans Administration will make payment to the veteran or to a duly appointed fiduciary. The Veterans Administration may make direct payment to the veteran even if he or she is a minor. (38 U.S.C. 1780)

(b) *Educational assistance—Chapter 35.* (1) The Veterans Administration will make payment to the eligible person if—

(i) He or she has attained majority and has no known legal disability, or

(ii) It is in his or her best interests, and there is no reason not to designate the eligible person as payee. The Veterans Administration may pay minors under this provision.

(2) When the eligible person is not designated as payee, the Veterans Administration will make payments to—

(i) The eligible person's parent or guardian,

(ii) A fiduciary, or

(iii) Some other suitable person. (38 U.S.C. 1780)

29. In § 21.4140, paragraphs (c), (d) and (e) are added as follows:

§ 21.4140 Apportionment.

* * * * *

(c) *Effects of veteran's incarceration on apportionment.* Whether a veteran's incarceration affects an apportionment of his or her educational assistance allowance depends upon the circumstances surrounding the incarceration and the date the Veterans Administration made the apportionment. (38 U.S.C. 3107(c))

(d) *Apportionment—incarceration due to a felony conviction.* (1) The provisions of this paragraph apply to a veteran whose educational assistance allowance is terminated or reduced because—

(i) The veteran is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(ii) The veteran is in a halfway house or work-release program for conviction of a felony, and all of his or her living expenses are being defrayed by the Federal government or a State or local government.

(2) The Veterans Administration will terminate the apportionment of the veteran's educational assistance allowance if—

(i) The Veterans Administration made the apportionment after October 16, 1980, or

(ii) The Veterans Administration made the apportionment before October 17, 1980, but it did not continue through all subsequent apportionable periods.

(3) The Veterans Administration will continue the apportionment of the veteran's educational assistance allowance if—

(i) The Veterans Administration made the apportionment before October 17, 1980, and

(ii) The veteran remains enrolled in training at a rate which would otherwise support the apportioned amount.

(4) The Veterans Administration may reduce the apportionment of the educational assistance allowance of a veteran described in paragraph (d)(3) of this section, as in the case of any apportionment, when circumstances change. (38 U.S.C. 3107(c))

(e) *Apportionment—incarceration for reasons other than a felony conviction.* (1) The provisions of this paragraph apply to a veteran whose educational assistance allowance is terminated or reduced while he or she is incarcerated in a Federal, State or local prison or jail for reasons other than a felony conviction.

(2) The Veterans Administration will terminate the apportionment of the veteran's educational assistance allowance if the educational assistance allowance is either—

(i) Terminated, or

(ii) Reduced below the amount that would otherwise be payable to a veteran with no dependents.

(3) The Veterans Administration may reduce the apportionment of the veteran's educational assistance allowance if the allowance is reduced below the amount which the veteran would have received had the veteran not been incarcerated but above the amount that would otherwise be payable to a veteran with no dependents. (38 U.S.C. 3107(c))

30. In § 21.4145, paragraphs (a), (b) and (d) are revised and paragraphs (e), (f), (g), (h) and (i) are added so that the added and revised material reads as follows:

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veterans pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. (38 U.S.C. 1685)

(b) *Selection criteria.* Whenever feasible, the Veterans Administration will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Veterans Administration shall consider the following additional selection criteria:

(1) Need of the veteran to augment his or her educational assistance allowance;

(2) Availability to the veteran of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran; and

(4) Compatibility of the work assignment to the veteran's physical condition. (38 U.S.C. 1685)

* * * * *

(d) *Rate of payment.* (1) In return for the veteran's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period, the Veterans Administration will pay an allowance in an amount equal to the higher of—

(i) The hourly minimum wage in effect under section (6)(a) of the Fair Labor Standards Act of 1938 times 250, or

(ii) $625.

(2) The Veterans Administration will pay proportionately less to veterans who agree to perform a lesser number of hours of services. (38 U.S.C. 1685)

(e) *Payment in advance.* The Veterans Administration will pay in advance an amount equal to 40 percent of the total amount payable under the contract. (38 U.S.C. 1685)

(f) *Veteran reduces rate of training.* In the event the veteran ceases to be a full-time student before completing an agreement, the veteran, with the approval of the Director of the Veterans Administration field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a full-time student. (38 U.S.C. 1685)

(g) *Veteran terminates training.* (1) If the veteran terminates all training before completing an agreement, the Director of the Veterans Administration field station or designee—

(i) May permit him or her to complete the portion of the agreement represented by the money the Veterans Administration has advanced to the veteran for which he or she has performed no services, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran terminates training. (38 U.S.C. 1685)

(h) *Indebtedness for unperformed service.* (1) If the veteran has received an advance for hours of unperformed service, and the Veterans Administration has evidence that he or she does not intend to perform that service, the advance—

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis of the contract. (38 U.S.C. 1685)

(i) *Survey.* The Veterans Administration will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively. (38 U.S.C. 1685)

31. In § 21.4153, the introductory text of paragraph (c)(4) is reprinted for the convenience of the reader, paragraphs (a), (b), (c) (1), (2), (3) and (4)(ii), the introductory text of paragraph (d) and (d)(6), (e) (1) and (2) and (f) are revised and paragraph (g) is added so that the added and revised material reads as follows:

§ 21.4153 Reimbursement of expenses.

(a) *Expenses will be reimbursed under contract*—(1) *Scope of contracts.* If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, the Veterans Administration will negotiate a contract or agreement with the State or local agency to pay (subject to funding) reasonable and necessary expenses incurred by the State or local agency in—

(i) Determining the qualification of educational institutions and training establishments to furnish programs of education to veterans and eligible persons,

(ii) Supervising educational institutions and training establishments, and

(iii) Furnishing any other services the Veterans Administration may request in connection with the law governing Veterans Administration education benefits.

(2) *Reimbursable supervision.* Supervision will consist of the services required—

(i) To determine that the programs are furnished in accordance with the law and with any other reasonable criteria as may be imposed by the State, and

(ii) To disapprove any programs which fail to meet the law and the established criteria. (38 U.S.C. 1774)

(b) *Reimbursement.* The Chief Benefits Director and the Director, Education Service are authorized to enter into agreements necessary to fulfill the purpose of paragraph (a) of this section. See § 21.4001(b). (38 U.S.C. 212(a))

(c) *Reimbursable expenses.* * * *

(1) *Salaries.* Salaries for which reimbursement may be authorized under a contract—

(i) Will not be in excess of the established rate of pay for other employees of the State with comparable or equivalent duties and responsibilities,

(ii) Will be limited to the actual salary expense incurred by the State, and

(iii) Will include the basic salary rate plus fringe benefits, such as social security, retirement, and health, accident, or life insurance, that are payable to all similarly circumstanced State employees. (38 U.S.C. 1774)

(2) *Travel.* (i) Travel expenses for which reimbursement may be authorized under a contract will be limited to—

(A) Expenses allowable under applicable State laws or travel regulations of the State or agency;

(B) Expenses for travel actually performed by employees specified under the terms of the contract and;

(C) Either actual expenses for transportation, meals, lodging and local telephone calls, or the regular State or agency per diem allowance.

(ii) All claims for travel expenses payable under the terms of a contract must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency.

(iii) Reimbursement will be made for expenses of attending out-of-State meetings and conferences only if the Director, Education Service authorizes the travel. (38 U.S.C. 1774)

(3) *Administrative expenses.* The formulas contained in this sub-paragraph will determine the allowance for administrative expenses for which payment may be authorized. Salary cost is defined in paragraph (c)(1) of this section.

(i) This formula is effective Oct. 1, 1980:

Total salary cost reimbursable	Allowable for administrative expense
$5,000 or less	$662.
Over $5,000 but not exceeding $10,000.	$1,191.
Over $10,000 but not exceeding $35,000.	$1,191 for the first $10,000, plus $1,103 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000.	$7,205.
Over $40,000 but not exceeding $75,000.	$7,205 for the first $40,000 plus $953 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000.	$14,288.
Over $80,000	$14,288 for the first $80,000 plus $833 for each additional $5,000 or fraction thereof.

(ii) This formula is effective Jan. 1, 1981:

Total salary cost reimbursable	Allowable for administrative expense
$5,000 or less	$693.
Over $5,000 but not exceeding $10,000.	$1,247.
Over $10,000 but not exceeding $35,000.	$1,247 for the first $10,000 plus $1,155 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000.	$7,548
Over $40,000 but not exceeding $75,000.	$7,548 for the first $40,000 plus $999 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000.	$14,969.
Over $80,000	$14,969 for the first $80,000, plus $872 for each additional $5,000 or fraction thereof.

(38 U.S.C. 1774(b))

(4) *Subcontracts.* The State approving agency may also be reimbursed for work performed by a subcontractor provided:

* * * * *

(ii) The Director, Education Service has approved the subcontract in advance. (38 U.S.C. 1774)

(d) *Nonreimbursable expenses.* The Veterans Administration will not provide reimbursement under reimbursement contracts for:

* * * * *

(6) Expenses of a State approving agency for inspecting, approving or supervising courses when the agency is responsible for establishing, conducting or supervising those courses. (38 U.S.C. 1774)

* * * * *

(e) *Agency operating plan.* * * *

(1) The Veterans Administration will determine personnel requirements for which the Veterans Administration provides reimbursement on the basis of estimated workloads agreed upon between the Veterans Administration and the State agency. Agreements are subject to review and adjustment.

(2) Workloads will be determined upon three factors:

(i) Inspection and approval visits,

(ii) Supervisory visits, and

(iii) Special visits at the request of the Veterans Administration. (38 U.S.C. 1774)

(f) *Contract compliance.* Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Director of the VA field station of jurisdiction determines that the State has failed to comply with the standards or provisions of the law or with the terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the matter will be referred to the Director, Education Service (contracting officer), for review. (38 U.S.C. 1774)

(g) *Contract disputes.* The State approving agency reimbursement contract is subject to the Contract Disputes Act of 1978. Disputes arising under, or relating to, the contract will be resolved in accordance with the disputes article of the contract and with appropriate procurement regulations. (41 U.S.C. 602)

32. In § 21.4154, paragraph (a) is revised as follows:

§ 21.4154 Report of activities.

(a) *State approving agencies must report their activities.* Each State approving agency entering into a contract or agreement under § 21.4153 must submit a monthly report of its activities to the Veterans Administration. (38 U.S.C. 1774)

* * * * *

33. In § 21.4200, paragraphs (g) and (h) are revised and paragraphs (n), (o), (p), (q), (r), (s), (t) and (u) are added so that the added and revised material reads as follows:

§ 21.4200 Definitions.

* * * * *

(g) *Standard class session.* The term means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. A standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory instruction, or 3 hours of workshop training. (38 U.S.C. 1788(c))

(h) *Institution of higher learning.* This term means—

(1) A college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(2) When there is no State law to authorize the granting of a degree, a school which—

(i) Is accredited for degree programs by a recognized accrediting agency, or

(ii) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(3) A hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a post-secondary degree.

(4) An educational institution which—

(i) Is not located in a State,

(ii) Offers a course leading to a standard college degree or the equivalent, and

(iii) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located. (38 U.S.C. 1652)

* * * * *

(n) *Enrollment.* This term means the state of being on that roll, or file of a school which contains the names of active students. (38 U.S.C. 1780(g))

(o) *Pursuit of a program of education.* (1) This term means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through—

(i) Resident courses,

(ii) Independent study courses,

(iii) Correspondence courses,

(iv) An apprenticeship or other on-the-job training program,

(v) Flight courses,

(vi) A farm cooperative course,

(vii) A cooperative course, or

(viii) A graduate program of research in absentia.

(2) The Veterans Administration will consider a veteran or eligible person who qualifies under § 21.4138 for payment during an interval or school closing, or who qualifies under § 21.4205 for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing or holiday vacation. (38 U.S.C. 1780(g))

(p) *Enrollment period.* (1) This term means an interval of time during which a veteran or eligible person—

(i) Is enrolled in an educational institution; and

(ii) Is pursuing his or her program of education.

(2) This term applies to each unit course or subject in the veteran's or eligible person's program of education. (38 U.S.C. 1780(g))

(q) *Attendance.* This term means the presence of a veteran or eligible person—

(1) In the class where the approved course is being taught in which he or she is enrolled;

(2) At a training establishment; or

(3) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or eligible person is enrolled and is pursuing a program of education. (38 U.S.C. 1780(g))

(r) *In residence on a standard quarter- or semester-hour basis.* This term means study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout a standard quarter or semester for one quarter- or one semester-hour credit. (38 U.S.C. 1788(c))

(s) *Deficiency course.* This term means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education. (38 U.S.C. 1691(a)(2))

(t) *Remedial course.* This term means a special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech. (38 U.S.C. 1691(a)(2))

(u) *Refresher course.* This term means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed. (38 U.S.C. 1691(a)(2))

34. In § 21.4201, paragraphs (a), (c), (d), (e)(1) (the introductory text preceding subdivision (i)), (e)(2), (f)(1) (the introductory text preceding subdivision (i)), (f)(2), (g), the introductory text of (h) and (h)(1) and (h)(1)(ii) and (h)(2) are revised and paragraph (e)(4) is removed so that the revised material reads as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* Except as otherwise provided in this section the Veterans Administration shall not approve an enrollment in any course for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the Veterans Administration pursuant to title 38, United States Code. This restriction may be waived in whole or in part. (38 U.S.C. 1673(d))

* * * * *

(c) *Affected courses.* (1) The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(i) Any farm cooperative course; and

(ii) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities.

(2) The provisions of paragraph (a) of this section apply to the enrollment of a serviceperson in a course leading to a high school diploma, equivalency cerificate, or a refresher, remedial or deficiency course, but they do not apply to the enrollment of a veteran in such a course.

(3) Except as provided in paragraph (c)(2) of this section, the provisions of paragraph (a) of this section do not apply to an approved course which—

(i) Is offered under contract with the Department of Defense,

(ii) Is on or immediately adjacent to a military base,

(iii) Has been approved by the State approving agency of the State—

(*a*) Where the base is located or

(*b*) Where the parent school is located if the course is offered overseas, and

(iv) Is available only to—

(*a*) Military personnel and their dependents, or

(*b*) Military personnel, their dependents and civilian employees of a base located in a State, or

(*c*) Persons authorized by the base commander to attend the course provided the base is located outside the United States.

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 and 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution. However, the provisions of paragraph (a) of this section will apply to such a course when—

(i) The course is a course of Special Assistance for the Educationally Disadvantaged and a serviceperson enrolls in it, or

(ii) The Director of the Veterans Administration field station of jurisdiction has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course. (38 U.S.C. 1673, 1691(c))

(d) *Applications for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(4) of this section. To obtain an exemption as stated in paragraph (c)(4) of this section schools must submit reports as required in paragraph (f)(1) of this section. (38 U.S.C. 1673)

(e) *Computing the 85–15 percent ratio—*(1) *Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85–15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions, as well as courses or curricula leading to a secondary school diploma or equivalency certificate offered at any branch or extention, must have an 85–15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a

branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85–15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc. (38 U.S.C. 1673(d))

* * * * *

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section the following students will be considered to be nonsupported provided they are not receiving educational assistance from the Veterans Administration:

(i) Students who are not veterans, and are not in receipt of institutional aid.

(ii) All graduate students in receipt of institutional aid.

(iii) Students in receipt of any Federal aid (other than Veterans Administration benefits).

(iv) Undergraduates and non-college degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike. (38 U.S.C. 1673(d))

* * * * *

(f) *Reports.* (1) Schools must submit to the Veterans Administration all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the first term for which the school wants the exemption to apply. If the school is not organized on a term, quarter or semester basis, it shall make that submission no later than 30 days after the beginning of the first calendar quarter for which the school wishes the exemption to apply. A school having received an exemption found in paragraph (c)(4) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Veterans Administration assistance: (38 U.S.C. 1673)

* * * * *

(2) The school must submit all calculations made under paragraph (e)(3) of this section to the Veterans Administration according to these time limits.

(i) If the school is organized on a term, quarter or semester basis, the calculations must be submitted no later than 30 days after the beginning of each regular school term (excluding summer sessions), or before the beginning date of the next term, whichever occurs first.

(ii) If a school is not organized on a term, quarter or semester basis, reports must be received by the Veterans Administration no later than 30 days after the end of each calendar quarter. (38 U.S.C. 1673)

(g) *Effect of the 85–15 percent ratio on processing new enrollments.* (1) The Veterans Administration will process new enrollments of eligible veterans (and servicepersons where this provision applies to them), in a course on the basis of the school's submission of the most recent computation showing that—

(i) The 85–15 percent ratio is satisfactory, or

(ii) The course is exempt under paragraph (c)(4) of this section.

(2) Except for those enrollments with a beginning date prior to or the same as the date the school completed the most recent computation, no benefits will be paid when that computation establishes that the course—

(i) Neither has a satisfactory 85–15 percent ratio, nor

(ii) Is exempt under paragraph (c)(4) of this section.

(3) If a school fails to submit a timely computation, no benefits will be paid for—

(i) The enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate if the enrollment has beginning dates beyond the expiration of the allowable computation period, or

(ii) The enrollment of a veteran in any course to which the provisions of paragraph (a) of this section apply if the enrollment has beginning dates beyond the expiration of the allowable computation period.

(4) Enrollments with later beginning dates may be processed only after the school certifies that—

(i) The proper ratio has been reestablished for the course, or

(ii) The course is exempt from the requirement under paragraph (c)(4) of this section.

(5) When a school shows a reestablished 85–15 percent ratio, each new veteran enrollment or enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate which is submitted after reestablishment must be individually computed into the ratio to ensure that the 85 percent limitation is not again immediately exceeded. The Veterans Administration will require individual computations until—

(i) The end of the term for which the ratio was reestablished, or

(ii) The end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis. (38 U.S.C. 1673, 1691(c))

(6) Once a student is properly enrolled in a course either before December 1, 1976 or after November 30, 1976, in a course which either meets the 85–15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85–15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving Veterans Administration education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education Service through the Director of the Veterans Administration field station of jurisdiction.

(1) When applying, a school must submit sufficient information to allow the Director, Education Service or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge the merits of the request against the criteria shown in this subparagraph. This information and any other pertinent information available to the Veterans Administration shall be considered in relation to these criteria: (38 U.S.C. 1673)

* * * * *

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Department of Education, if applicable. Otherwise, the school should submit data sufficient to allow the Director, Education Service, or the Director of the VA field station of jurisdiction, as appropriate, to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published in chapter VI, part 624, subpart B, Title 34, Code of

Federal Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met. (38 U.S.C. 1673(d))

* * * * *

(2) If a school disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the Director's recommendation be forwarded to the Director, Education Service for administrative review. (38 U.S.C. 1673(d))

35. In § 21.4202, paragraph (a) is revised as follows:

§ 21.4202 Overcharges; restrictions on enrollments.

(a) *Overcharges.* The Veterans Administration may disapprove a school for further enrollments, when the school charges or receives from a veteran or eligible person tuition and fees that exceed the established charges which the school requires from similarly circumstanced non-veterans enrolled in the same course. See § 21.4207. (38 U.S.C. 1790)

* * * * *

36. In § 21.4203, paragraphs (a) and (b)(1)(i) are revised as follows:

§ 21.4203 Reports—requirements.

(a) *General.* (1) Each educational institution, veteran and eligible person shall report without delay the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved course.

(2) In addition educational institutions must—

(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and

(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(3) Nothing in this section or in any section in Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree. (38 U.S.C. 1780(d), 1784, 1785, 1798)

(b) *Entrance or reentrance.* * * *

(1) * * *

(i) The Director of the Veterans Administration field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1780(a))

* * * * *

37. In § 21.4205, paragraph (c) is revised and paragraph (d) is added so that the added and revised material reads as follows:

§ 21.4205 Absences.

* * * * *

(c) *Reporting.* (1) Educational institutions, training establishments and veterans and eligible persons must report—(i) Each day of absence from scheduled attendance—including Saturday and Sunday if classes are normally scheduled for those days.

(ii) Days when the school is closed for local and school holidays.

(iii) If reported enrollment is on an ordinary school year basis, intervals between terms, quarters or semesters, and

(iv) Days of nonattendance in a farm cooperative course which occur during the prescheduled classroom instruction.

(2) Educational institutions, training establishments and veterans and eligible persons will not report—

(i) Days when the school is closed for a weekend provided classes are not normally scheduled for Saturday or Sunday.

(ii) Days when the school is closed for legal holidays or customary, reasonable vacation periods connected with them which are identified as a holiday vacation on the school approval literature. Generally, the Veterans Administration will interpret a reasonable period as not more than 1 calendar week at Christmas and 1 calendar week at New Years and shorter periods of time in connection with other legal holidays.

(iii) Days (not to exceed five in any 12-month period) when the institution is not in session because of teacher conferences or teacher training sessions, and

(iv) At the discretion of the Director of the Veterans Administration field station of jurisdiction, days of nonattendance within a certified period of enrollment during which the school is closed under an Executive Order of the President or due to an emergency situation.

(A) If the Director has authorized the nonreporting of days of absence as the result of an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service will decide if absences will continue not to be reported. He or she will base the decision on a full assessment of the strike situation. The Veterans Administration will terminate payment of educational assistance if in the Director's judgment the school closing will not be temporary. (38 U.S.C. 1780(a))

(B) A school which disagrees with a decision made under paragraph (c)(2)(iv) of this section by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1780(a))

(3) The school will verify the full days of absence reported and endorse the report. In addition, the school will convert partial days of absence to full days in accordance with the following formula and report the accumulated total.

(i) Compute the average hours of daily attendance. (Divide the hours of required attendance per week by the days of required attendance per week.)

(ii) Total the absences of less than a full day which occurred during the month. (See paragraph (c)(4) of this section.)

(iii) Divide the total hours of absence for the month (paragraph (c)(3)(ii) of this section) by the average hours of daily attendance (paragraph (c)(3)(i) of this section) to determine the full days of absence to be reported. A fractional day in the result will be dropped if it is one-half day or less and increased to the next whole day if more than one-half day.

(4) An occasional tardiness (not more than two per week) of one-half hour or less will not be counted if it is excused by the school. Tardiness which is not excused and tardiness of more than one-half hour, whether excused or not, will be counted as 1 or more hours of absence. Absences during any portion of the day will be counted, whether more or less than an hour. All early departures will be counted, even though excused. Except for an occasional tardiness of one-half hour or less which is excused by the school, any absence of less than an hour will be counted as a full hour of absence.

(5) For a farm cooperative course the absences to be reported by the veteran or eligible person and verified by the school will be those days of non-attendance which occur during a period of the prescheduled classroom instruction.

(d) *Absence accounting for transfer students.* (1) The Veterans Administration will count as absences for the purposes of this paragraph the days included in the interval between consecutive school terms within a school year when a veteran or eligible person, who is pursuing a course not leading to a standard college degree—

(i) Transfers from one approved institution to another, and

(ii) Receives payment for the interval on the basis described in paragraph (d)(2) and (3) of this section.

(2) A veteran or eligible person remains eligible for payment for the interval if—

(i) He or she enrolls in and pursues at the second institution a course which is similar to the course he or she pursued at the first institution, and

(ii) The interval does not exceed 30 days from the termination date of the first institution's school term.

(3) For the purpose of entitlement to payment of the educational assistance allowance, the Veterans Administration considers the veteran or eligible person to be enrolled at the first institution during the interval. (38 U.S.C. 1780(a))

38. Section 21.4206 is revised as follows:

A. By removing the legal citation "38 U.S.C. 1784(b)" and inserting "38 U.S.C. 1784(c)" in paragraphs (a) and (b).

B. By adding paragraph (e) as follows:

§ 21.4206 Reporting fee.

* * * * *

(e) Before payment of a reporting fee the Veterans Administration will require an educational institution to certify that—

(1) It has exercised reasonable diligence in determining whether it or any course offered by it approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapters 34, 35 and 36 of title 38, United States Code; and

(2) It will, without delay, report any failure to meet any requirement to the Veterans Administration. (38 U.S.C. 1784(b))

39. In § 21.4207, the introductory text of paragraph (c) is revised as follows:

§ 21.4207 Failure of school to meet requirements.

* * * * *

(c) *Referral to Central Office by the field station.* The decision will be made by Central Office if:

(38 U.S.C. 1772)

* * * * *

40. In § 21.4208, paragraphs (a) and (b) are revised as follows:

§ 21.4208 Central Office Education and Training Review Panel.

(a) *Purpose.* The panel will receive evidence and hear the testimony of witnesses and the arguments of interested parties regarding matters considered by the field station Committee on Educational Allowances and make recommendations to the Director, Education Service, on matters which are before him or her for final administrative determination under § 21.4201, § 21.4202 or § 21.4207. (38 U.S.C. 1772)

(b) *Composition of panel.* The panel will consist of one staff employee from the office of the Director, Education Service, and two persons who are not employees of the Veterans Administration chosen from a group of consultants selected for that purpose. (38 U.S.C. 1772)

* * * * *

41. In § 21.4209, paragraph (a) is revised as follows:

§ 21.4209 Examination of records.

(a) *Availability of records.* Notwithstanding any other provision of law, educational institutions must make the following records and accounts available to authorized Government representatives:

(1) Records and accounts pertaining to veterans or eligible persons who received educational assistance under chapter 31, 32, 34, 35 or 36, title 38, United States Code, and

(2) Other students' records necessary for the Veterans Administration to ascertain institutional compliance with the requirements of these chapters. (38 U.S.C. 1790)

* * * * *

42. Sections 21.4231 and 21.4232 are revised to read as follows:

§ 21.4231 Educational plan—38 U.S.C. Chapter 35—child.

(a) *Preparation of an educational plan.* (1) An educational plan must be prepared in each case in which educational assistance is requested by or for a child.

(2) The Veterans Administration will provide the assistance of a counseling psychologist if the eligible child or a parent or guardian requests this assistance.

(3) The educational plan—

(i) Must be prepared on a prescribed Veterans Administration form,

(ii) May be submitted and signed by the eligible child if he or she is not a minor, and

(iii) Must be signed by a parent or guardian if the eligible child is a minor.

(4) The Veterans Administration will treat the plan as an integral part of the application. (38 U.S.C. 1720)

(b) *Content of the educational plan.* The educational plan will show—

(1) The objective and program selected,

(2) The school where the child will pursue the program, and

(3) The estimated cost for tuition and fees. (38 U.S.C. 1720)

(c) *Approval of the educational plan.* The Veterans Administration will finally approve the educational plan when the Veterans Administration determines that—

(1) The proposed program constitutes a program of educational as defined in § 21.4230;

(2) The eligible child is not already qualified, by reason of previous education, for the educational, professional, or vocational objective for which the program of education is offered;

(3) The eligible child's proposed educational institution or training establishment is in compliance with all the requirements of chapters 35 and 36, title 38, United States Code, and

(4) The enrollment in or pursuit of the program of education by the eligible child would not violate any provisions of chapter 35 or 36, title 38, United States Code. (38 U.S.C. 1721)

§ 21.4232 Specialized vocational training—38 U.S.C. Chapter 35.

(a) *Eligibility requirements for specialized vocational training.* (1) The Veterans Administration may provide a program of a specialized course of vocational training to an eligible person who—

(i) Is not in need of special restorative training, and

(ii) Requires specialized vocational training because of a mental or physical handicap.

(2) The Vocational Rehabilitation Board will—

(i) Determine whether such a course is in the best interest of the eligible person;

(ii) Assist in developing the program and a suitable educational plan, if the course is in the eligible person's best interest; and

(iii) Deny the application for the program when the course is not in the eligible person's best interest.

(3) The Veterans Administration may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday. (38 U.S.C. 1736)

(b) *Program objective.* The objective of a program of specialized vocational training will be designated as a vocational objective.

(c) *Special assistance.* When needed, special assistance will be provided under § 21.4276.

43. In § 21.4233, the introductory text of paragraph (c)(1) is reprinted for the convenience of the reader and paragraph (c)(1)(iii) is revised as follows:

§ 21.4233 Combination.

* * * * *

(c) *Television*—(1) *Open circuit telecast.* A program may be pursued in part by open circuit telecast when:

* * * * *

(iii) A portion of the credit hours for which the veteran or eligible person is enrolled during any semester or quarter is offered through conventional classroom or laboratory instruction or both. (38 U.S.C. 1673 (c))

* * * * *

44. In § 21.4235, paragraphs (a), (d) and (e) are revised and paragraph (j) is removed so that the revised material reads as follows:

§ 21.4235 Special assistance for the educationally disadvantaged—chapter 34.

(a) *Enrollment.* (1) The Veterans Administration may approve the enrollment of a veteran or eligible serviceperson in an elementary or secondary course of education if—

(i) The veteran or eligible serviceperson has not received a secondary school diploma or an equivalency certificate, and

(ii) The course is necessary in order for the veteran or eligible serviceperson to receive a secondary school diploma or an equivalency certificate.

(2) The Veterans Administration may approve the enrollment of a veteran or eligible serviceperson in a preparatory, refresher, remedial, deficiency or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue a program of education for which he or she would otherwise be eligible. The eligible serviceperson may not take the course under chapter 34, subchapter V, title 38, United States Code, because the Veterans Administration must make a charge against the serviceperson's entitlement for this type of training. (38 U.S.C. 1691)

* * * * *

(d) *Entitlement charge.* The provisions of § 21.1045 will determine whether a charge will be made against the period of the veteran's entitlement because of enrollment in courses under the provisions of this section. (38 U.S.C. 1690, 1691, 1693)

(e) *Certifications.* (1) Certifications of the serviceperson's or veteran's need for deficiency or remedial courses in basic English language skills and mathematics skills may be made by either—

(i) The service education officer (in the case of a serviceperson),

(ii) A Veterans Administration counseling psychologist in the Vocational Rehabilitation and Counseling Division,

(iii) The educational institution administering the course, or

(iv) The educational institution where the individual has applied for admission.

(2) Certifications of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Which is administering the course which the student is planning to enter, or

(ii) When the student has applied for admission. (38 U.S.C. 1691)

* * * * *

45. Section 21.4236 is revised as follows:

§ 21.4236 Special supplemental assistance (tutorial).

(a) *Enrollment.* A veteran or eligible person may receive supplemental monetary assistance to provide tutorial services if he or she—

(1) Is pursuing a post-secondary educational program on a half-time or more basis at an educational institution, and

(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education. (38 U.S.C. 1692)

(b) *Approval.* The Veterans Administration will grant approval when—

(1) The educational institution certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis. (38 U.S.C. 1692)

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or 21.4137, the Veterans Administration will authorize the cost of the tutorial assistance in an amount not to exceed—

(1) $72 per month effective October 1, 1980, and

(2) $76 per month effective January 1, 1981. (38 U.S.C. 1692(b))

(d) *Entitlement charge.* The Veterans Administration will make no charge against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of—

(1) $869 effective October 1, 1980, and

(2) $911 effective January 1, 1981. (38 U.S.C. 1690, 1692, 1693)

46. In §21.4237, paragraphs (b), (d) and (e) are revised as follows:

§ 21.4237 Special assistance for the educationally disadvantaged—Chapter 35 spouse or surviving spouse.

* * * * *

(b) *Measurement.* The Veterans Administration will measure remedial, deficiency or refresher courses offered at the secondary school level as provided in §§ 21.4271(c) and 21.4272(k). (38 U.S.C. 1733)

* * * * *

(d) *Entitlement charge.* The provisions of § 21.1045 will determine whether a charge will be made against the period of the entitlement of the spouse or surviving spouse because of enrollment

in courses under the provisions of this section. (38 U.S.C. 1733)

(e) *Certifications.* (1) Certifications of the eligible spouse's or surviving spouse's need for deficiency or remedial courses in basic English language skills and mathematic skills may be made by either—

(i) A Veterans Administration counseling psychologist, in the Vocational Rehabilitation and Counseling Division,

(ii) The educational institution administering the course, or

(iii) The educational institution where the student has applied for admission.

(2) Certification of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Administering the course which the student is planning to enter, or

(ii) Where the student has applied for admission. (38 U.S.C. 1733)

* * * * *

47. In § 21.4250, paragraph (c) is revised as follows:

§ 21.4250 Approval of courses.

* * * * *

(c) *Veterans Administration approval.* (1) The Director Vocational Rehabilitation and Counseling Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under chapter 35.

(2) The Director, Education Service may approve—

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 38 U.S.C. ch. 32, 34 or 35 offered by a school located in the Canal Zone, Guam or Samoa;

(iii) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 38 U.S.C. ch. 32, 34 or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. ch. 36; and

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29, United States Code as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State. (38 U.S.C. 1641, 1676, 1723, 1772(b), 1772(c))

48. In § 21.4251, the introductory text of paragraphs (a) and (f) are reprinted for the convenience of the reader, paragraphs (a) (1), (5) and (6), (c), (d) and (f) (1) and (2) are revised. In addition the present paragraph (g) is removed and paragraph (h) is redesignated (g) and the introductory text and subparagraph (3) (the introductory portion preceding subdivision (i)) and subparagraph (4) are revised as follows:

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(1) Any course to be pursued in a public or other tax-supported educational institution including the flying clubs which are the subject of § 21.4201(c)(1)(ii); (38 U.S.C. 1789(b))

* * * * *

(5) Any course for the educationally disadvantaged offered by a proprietary nonprofit educational institution, at the principal or branch location, when the institution offering the course has been in operation for more than 2 years; or

(6) Any course—

(i) Offered by an educational institution under a contract with the Department of Defense,

(ii) Given on, or immediately adjacent to, a military base,

(iii) Available only to active duty military personnel or their dependents or both, and

(iv) Approved by the State approving agency—

(A) of the State in which the base is located, or

(B) Of the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. The Director, Education Service or the Director of the Veterans Administration field station of jurisdiction pursuant to paragraph (g) of this section may waive the requirements of this subparagraph in whole or in part, when such a waiver is in the interest of the veteran and the Federal Government. (38 U.S.C. 1789(b))

* * * * *

(c) *Course similar in character.* A course is similar in character if it provides training for the same general objective and involves the same or related instructional processes, tools, and material as a course previously furnished by the school for at least 2 years. When the State approving agency approves a course which has not been in operation for at least 2 years, as similar in character to a course which has been in operation for at least 2 years, the State approving agency will furnish the Veterans Administration with—

(1) A copy of the approval, and

(2) The basis for its conclusion that the courses are similar. (38 U.S.C. 1789)

(d) *Move to new location.* A school has moved to another location in the same general locality when—

(1) The new location is within normal commuting distance of the original location, and

(2) The school—

(i) Has essentially the same faculty and student body, and

(ii) Offers the same courses. (38 U.S.C. 1789)

* * * * *

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a)(1), (2), (3) or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as provided in the following subparagraphs:

(1) Unless the Director, Education Service or the Director of the appropriate Veterans Administration field station waives the 2-year period of operation requirement in whole or in part (as provided in paragraph (g) of this section), it will apply to any course offered by a branch or extension of any of the following institutions:

(i) A public or other tax-supported institution where the branch or extension is located outside the area of the taxing jurisdiction providing support to the institution,

(ii) A proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond normal commuting distance of the institution, or

(iii) A proprietary profit educational institution, even if the branch or extension is located within normal commuting distance.

(2) A course for which such a waiver is granted will be exempt from the 2-

year period of operation requirement only if it also satisfies the provisions of either paragraph (a)(1), (2), (3) or (4) of this section. (38 U.S.C. 1789(b))

* * * * *

(g) *Waivers.* A school may apply to the appropriate Veterans Administration field station Director for a waiver of the provisions of paragraph (a)(6) or (f) of this section. The Veterans Administration field station Director may grant a waiver only when the conditions specified in this paragraph have been met. If the Director denies a waiver, he or she shall inform the school that the request is denied, and that the school may request a review by the Director, Education Service. A request for review will be forwarded to the Director, Education Service with the field station Director's recommendation. (38 U.S.C. 1789(b))

* * * * *

(3) The Director of the Veterans Administration field station of jurisdiction may exercise authority found in paragraph (f) of this section to allow a waiver of the requirements of paragraph (f)(1) of this section. He or she may grant such a waiver when he or she finds that: * * *

(4) A school, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1789)

§ 21.4251 [Amended]

49. The cross reference following § 21.4251 is revised to read as follows: "Courses offered at subsidiary branches or extensions. See § 21.4266."

50. In § 21.4252, paragraphs (g) and (h) are revised as follows:

§ 21.4252 Courses precluded.

* * * * *

(g) *Vocational courses—chapters 34, 35 and 36.* (1) Except as specified in paragraph (g)(2) and (3) of this section the Veterans Administration shall not approve a veteran's or eligible person's enrollment in any course with a vocational objective unless the veteran or eligible person, or the institution offering the course, establishes that at least one-half of the persons completing the course during the preceding 2-year period have attained employment for an average of 10 hours per week in the occupational category for which the course is designed to provide training. There shall be excluded from this calculation the number of persons who—

(i) Pursued the course with assistance under title 38, United States Code, while serving on active duty, or

(ii) Are unavailable for employment.

(2) The provisions of paragraph (g)(1) of this section do not apply to an enrollment in a course in a particular year if—

(i) The total number of eligible veterans and eligible persons enrolled in the educational institution offering the course during the 2-year period preceding that year did not exceed 35 percent of the total enrollment in the educational institution during that 2-year period, and

(ii) The course met the requirements of paragraph (g)(1) of this section for any 2-year period ending after October 16, 1980.

(3) An educational institution desiring a waiver from the application of the provisions of paragraph (g)(1) of this section may apply to the appropriate State approving agency. The State approving agency will recommend to the Director of the Veterans Administration field station of jurisdiction whether or not the Director should grant a waiver. The State approving agency will consider all evidence of record including whether—

(i) The total number of eligible veterans and eligible persons enrolled in the educational institution during the 2-year period preceding the request ever exceeded 35 percent of the total enrollment in the educational institution during that period;

(ii) The total number of eligible veterans and eligible persons enrolled during the 2 years preceding the request ever exceeded 20 percent of the total enrollment in the course during that period;

(iii) The estimated cost of complying with the requirements of paragraph (g)(1) of this section exceeds $22 times the number of eligible veterans and eligible persons enrolled in the course during the 2-year period; and

(iv) The institution collects, or would collect, data on the employment of all graduates solely or principally to compile an employment report to satisfy the requirements of paragraph (g)(1) of this section.

(4) The Director of the Veterans Administration field station of jurisdiction shall consider the State approving agency's recommendation and all other evidence of record in determining whether to grant or deny the request for a waiver.

(5) If an educational institution disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the field Director's determination be forwarded to the Director, Education Service for administrative review.

(6) An exemption under paragraph (g)(2) of this section is revoked automatically at any time the total number of eligible veterans and eligible persons enrolled in the educational institution exceeds 35 percent of the total enrollment. If the educational institution is organized on a term, quarter or semester basis and the exemption is revoked, the beginning date of the 2-year period will be the first day of the term, quarter or semester during which the total number of eligible persons exceeded 35 percent of the total enrollment in the educational institution. If the educational institution is not organized on a term, quarter or semester basis, the beginning date of the 2-year period will be the first day of the calendar quarter during which the total number of eligible veterans and eligible persons exceeded 35 percent of the total enrollment in the educational institution.

(7) A waiver under paragraph (g)(3) of this section is revoked automatically at any time the total number of eligible veterans and eligible persons enrolled in the educational institution exceeds 35 percent of the total enrollment, or the total number of eligible veterans and eligible persons enrolled in the course for which a waiver has been granted exceeds 20 percent of the total enrollment in the course.

(i) If the educational institution is organized on a term, quarter or semester basis, the beginning date of the 2-year period will be the first day of the term, quarter or semester during which—

(A) The number of eligible veterans and eligible persons enrolled in the educational institution first exceeded 35 percent of the educational institution's total enrollment; or

(B) The number of eligible veterans and eligible persons enrolled in the course for which a waiver has been granted first exceeded 20 percent of the total enrollment in the course, whichever is earlier.

(ii) If the educational institution is not organized on a term, quarter or semester basis, the beginning date of the 2-year period will be the first day of the calendar quarter during which—

(A) The number of eligible veterans and eligible persons enrolled in the educational institutions first exceeded 35 percent of the educational institution's total enrollment; or

(B) The number of eligible veterans and eligible persons enrolled in the course for which a waiver has been granted first exceeded 20 percent of the total enrollment in the course, whichever is earlier. (38 U.S.C. 1673(a), 1723(a))

(h) *Erroneous, deceptive, misleading practices.* (1) The Veterans' Administration will not approve an enrollment in any course offered by an institution which uses advertising, sales, or enrollment practices which are erroneous, deceptive, or misleading by actual statement, omission, or intimation. As provided by section 1796, title 38, United States Code, the Veterans' Administration shall use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement—

(i) To carry out investigations, and

(ii) To make determinations under this paragraph.

(2) To ensure compliance, any institution offering courses approved for the enrollment of veterans or eligible persons shall maintain a complete record of all advertising, sales, or enrollment materials (and copies of each) used by or on behalf of the institution during the preceding 12-month period. This record shall be available for inspection by the State approving agency or the Veterans' Administration. These materials shall include, but are not limited to—

(i) Any direct mail pieces,

(ii) Brochures,

(iii) Printed literature used by sales people,

(iv) Films, video cassettes and audio tapes disseminated through broadcast media,

(v) Material disseminated through print media,

(vi) Tear sheets,

(vii) Leaflets,

(viii) Handbills,

(ix) Fliers, and

(x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution. (38 U.S.C. 1796)

* * * * *

51. In § 21.4253, paragraph (c) is revised as follows:

§ 21.4253 Accredited courses.

* * * * *

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of Education as required by 38 U.S.C. 1775(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of the course specifically accredited and approved by the agency or association. (38 U.S.C. 1775)

* * * * *

52. Section 21.4260 is revised as follows:

§ 21.4260 Courses in foreign countries.

(a) *Approval of postsecondary courses in foreign countries.* (1) The Veterans' Administration may approve a postsecondary course offered by an educational institution not located in a State when—

(i) The educational institution offering the course is an institution of higher learning, and

(ii) The course leads to a standard college degree, or its equivalent.

(2) For the purpose of this paragraph, a degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution of higher learning in that country. (38 U.S.C. 1676)

(b) *Approval of enrollments in foreign courses.* (1) Except as provided in paragraph (b)(2) of this section the Veterans' Administration will approve the enrollment of a veteran or eligible person in a course offered by an educational institution not located in a State when—

(i) The veteran or eligible person meets the eligibility and entitlement requirements of §§ 21.1040 through 21.1045, 21.3040 through 21.3046 or 21.5040 and 21.5041, as appropriate;

(ii) The veteran's or eligible person's program of education meets the requirements of § 21.4230 or § 21.5230 as appropriate; and

(iii) The course meets the requirements of this section and all other applicable VA regulations.

(2) The Veterans' Administration may deny or discontinue the payment of educational assistance allowance to a veteran or eligible person pursuing a course in an institution of higher learning not located in a State when the Veterans' Administration finds that the veteran's or eligible person's enrollment is not in the best interests of the veteran, eligible person or the Federal Government. (38 U.S.C. 1676)

53. In § 21.4263, the introductory text of paragraph (i) is revised as follows:

§ 21.4263 Flight training—38 U.S.C. Chapter 34, Chapter 32.

* * * * *

(i) *Hourly limitations.* A flight course approved pursuant to paragraph (h)(3) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an identified vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraph (i) (1) through (3) of this section. Flight instruction may never be substituted for ground training. The Veterans' Administration may pay veterans for hours beyond the hours approved only when permitted by the school's standards of progress. (38 U.S.C. 1652(b))

* * * * *

54. In § 21.4270, the introductory text of paragraph (b) is revised as follows:

§ 21.4270 Measurement of courses.

* * * * *

(b) Collegiate graduate, professional and on-the-job training courses shall be measured as stated in this table. This table shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week. (38 U.S.C. 1682, 1732, 1777, 1787, 1788)

* * * * *

55. In § 21.4272, paragraphs (d), (e), (f) and (g) are revised and paragraphs (h), (i), (j) and (k) are added so that the added and revised material reads as follows:

§ 21.4272 Collegiate undergraduate; credit-hour basis.

* * * * *

(d) *Course measurement; general.* When an undergraduate course qualifies for credit-hour measurement, the Veterans' Administration will measure it according to the table contained in § 21.4270(b). (38 U.S.C. 1788)

(e) *Course measurement; normal method.* The Veterans' Administration will use the table in § 21.4270(b) for measurement of a collegiate undergraduate course without adjusting the credit hours assigned by a school when the course is one of the following:

(1) A course offered in residence on a standard quarter- or semester-hour basis,

(2) A work-experience course meeting the requirements of § 21.4265(f),

(3) A course of student teaching,

(4) That portion of a cooperative course consisting of school instruction if the veteran or eligible person elects not to receive educational assistance for the portion consisting of training in a business or industrial establishment.

(5) A course involving flight training.

(6) A course which—

(i) Requires the pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks.

(ii) Requires monthly pursuit of a total number of standard class sessions equal to the number of class sessions that would result if the course required one standard class session per week for each credit hour.

(iii) Is considered by the institution offering it to be fully equivalent to a course described in paragraph (e)(1) of this section including—

(A) The payment of tuition and fees

(B) The awarding of academic credit for the purpose of meeting graduation requirements, and

(C) The transfer of credits to a course meeting the provisions of paragraph (e)(1) of this section,

(iv) Would qualify as a course under paragraph (e)(1) of this section except that it does not have weekly class instruction, and

(v) Together with all other similar courses offered by the educational institution, has an enrollment representing less than 50 percent of the persons at that educational institution receiving educational assistance under chapter 31, 32, 34, 35 or 36, title 38, United States Code. (38 U.S.C. 1788)

(f) *Course measurement; insufficient standard class sessions.* The Veterans' Administration will measure by the week any collegiate undergraduate course offered in residence which is not listed in paragraph (e) of this section.

(1) When a course is offered over a standard quarter or semester as defined in § 21.4200(b) and includes weeks with at least one regularly scheduled, standard class session for each credit hour, the Veterans' Administration will use the table in § 21.4270(b) without adjustment when determining the training time for those weeks.

(2) When a course includes one or more weeks with more than one regularly scheduled class for every 2 credit hours, but less than one regularly scheduled class session for each credit hour, the Veterans' Administration will determine the training time for those weeks in one of two ways:

(i) The Veterans' Administration will determine training time for the week by using the table in § 21.4270(b) without adjustment when the course requires a level of educational pursuit which approximates, quantitatively and qualitatively, the level required by a similar course offered on a standard quarter- or semester-hour basis. In making this determination the Veterans' Administration will consider whether—

(A) The published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-hour basis, or

(B) The student is required to complete in place of class time such things as papers to be written, extra books to be read for the course, and additional projects to be completed.

(ii) If measurement as described in paragraph (f)(2)(i) of this section is not in order, the Veterans Administration will—

(A) Determine the number of standard class sessions for the week,

(B) Drop any fractions of a standard class session, and

(C) Consider the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(b) to determine training time for the week.

(3) If the course includes one or more weeks with at least one regularly scheduled class session, but no more than one regularly scheduled class session for every 2 credit hours, the Veterans Administration will measure the training time for those weeks by—

(i) Determining the number of standard class sessions for the week,

(ii) Dropping any fractions of a standard class session, and

(iii) Considering the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(b) to determine training time for the week. (38 U.S.C. 1788(b))

(g) *Course measurement; nonstandard terms.* (1) When a term is not a standard semester or quarter as defined in § 21.4200(b), the Veterans Administration will determine the equivalent for full-time training by—

(i) Multiplying the credits to be earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and

(ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks for this formula the Veterans Administration will—

(i) Divide the number of days in the term by 7,

(ii) Disregard a remainder of 3 days or less, and

(iii) Consider 4 days or more to be a whole week.

(3) The quotient resulting from the use of the formula is called equivalent credit hours. The Veterans Administration treats equivalent credit hours as credit hours for measurement purposes. If there is at least one regularly scheduled standard class session per equivalent credit hour each week, the Veterans Administration will use the number of equivalent credit hours to compute educational assistance allowance using the criteria of § 21.4270(b) or the criteria of footnote 2 to that paragraph, whichever is appropriate. If a week contains less than one standard class session per equivalent credit hour, the Veterans Administration will determine training time according to the provisions of paragraph (f)(2) of this section. (38 U.S.C. 1788(b))

(h) *Course measurement; independent study.* The Veterans Administration shall measure a course or subject offered solely by independent study as follows:

(1) If the educational institution evaluates the course or subject in semester or quarter hours of credit and prescribes a period for completion, the course shall be measured as less than one-half but more than one-quarter time when the semester hours per term or equivalent are four or more, and measured as one-quarter time or less for 1 through 3 semester hours per semester or equivalent.

(2) If the educational institution does not evaluate the independent study program in standard semester or quarter hours or the equivalent, independent study shall be measured as less than one-half but more than one-quarter time training. (38 U.S.C. 1682(e))

(i) *Course measurement; combined independent study—resident training.* (1) If a veteran or eligible person pursues independent study concurrently with resident training under chapter 34 or 35, title 38, United States Code, the Veterans Administration shall determine training time as follows:

(i) If the independent study credit hours the veteran or eligible person is pursuing would equal half-time or more, according to the table in § 21.4270(b), the Veterans Administration shall convert them to the highest number of hours considered to be less than half-time training. If the independent study is not measured on a credit-hour basis, the Veterans Administration will assign a credit-hour evaluation to independent study based on the highest number of credit hours considered to be less than half-time training.

(ii) The Veterans Administration will add the number of independent study credit hours as determined in paragraph (i)(1)(i) of this section to the number of hours of resident training. The hours of resident training will be either credit

hours or hours based on the number of standard class sessions as required by paragraph (e) or (f) of this section, as appropriate.

(iii) The Veterans Administration will use the total hours computed in paragraph (i)(1)(ii) of this section to determine the training time based upon the measurement criteria found in § 21.4270(b).

(2) In applying the procedure outlined in paragraph (i)(1) of this section when the veteran or eligible person pursues a course or subject of independent study and resident training sequentially, as described in § 21.4280(g)(2), the Veterans Administration will treat that course or subject as—

(i) Independent study during any week in which the course or subject meets the definition of independent study found in § 21.4280(c), and

(ii) Resident training during weeks in which regularly scheduled classroom sessions meet. (38 U.S.C. 1682(e))

(j) *Course measurement; credit course taken under special circumstances.* If a course is acceptable for credit, but the educational institution does not award credit to the veteran or eligible person because he or she has not met college entrance requirements or for some other valid reason, the Veterans Administration will measure the course as though it were pursued for credit, provided the veteran or eligible person performs all of the work prescribed for other students who are enrolled for credit. (38 U.S.C. 1788(b))

(k) *Course measurement; noncredit courses.* (1) Except for courses leading to a secondary school diploma or equivalent, the Veterans Administration will measure noncredit courses given by an institution of higher learning on a quarter- or semester-hour basis if the institution considers them to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the institution of higher learning.

(2) The Veterans Administration shall measure other noncredit courses under the appropriate criteria of § 21.4270.

(3) Where a school requires a veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet scholastic or entrance requirements, the school will certify the credit-hour equivalent of the noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The Veterans Administration will measure the course on the total of the credit hours and credit-hour equivalency. (38 U.S.C. 1788)

56. Section 21.4277 is revised as follows:

§ 21.4277 Discontinuance—unsatisfactory progress and conduct.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if the veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending. (38 U.S.C. 1674 and 1724)

(b) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253. (38 U.S.C. 1674 and 1724)

§ 21.4277 [Amended]

57. The cross reference immediately following § 21.4277 is revised to read "Reports—requirements. See § 21.4203."

58. In § 21.4279, paragraph (b)(1) is revised as follows:

§ 21.4279 Combination correspondence—residence program.

* * * * *

(b) * * *

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each $327 of cost reimbursed, effective October 1, 1980; and 1 month of entitlement charged for each $342 of cost reimbursed, effective January 1, 1981. (38 U.S.C. 1786(a))

* * * * *

59. Section 21.4280 is revised as follows:

§ 21.4280 Independent study leading to a standard college degree.

(a) *General.* A veteran or eligible person may receive an educational assistance allowance for pursuit of an independent study course or subject or for a course or subject which combines independent study with resident training. However, a veteran or eligible person may not receive an educational assistance allowance for pursuing a course or subject offered through open-circuit television unless he or she is enrolled concurrently in resident training. (38 U.S.C. 1673, 1682, 1733)

(b) *Scope of independent study.* The provisions of this section do not apply to a veteran or eligible person who is enrolled in—

(1) A cooperative course as defined in § 21.4233(a).

(2) A farm cooperative course, or

(3) A course approved as a correspondence course. (38 U.S.C. 1682, 1732)

(c) *Definition of independent study.* The Veterans Administration considers a course or subject to be offered entirely through independent study when the course or subject—

(1) Leads to a standard college degree;

(2) Consists of a prescribed program of study with provision for interaction either by mail, telephone or personally between the student and the regularly employed faculty of the university or college;

(3) Is offered without any regularly scheduled, conventional classroom or laboratory sessions; and

(4) Is not a course listed in paragraph (b), (e) or (f) of this section. (38 U.S.C. 1682, 1732)

(d) *Undergraduate resident training.* (1) The Veterans Administration considers the following courses to be resident training during the entire period a veteran or eligible person is pursuing them:

(i) A course or subject which meets the requirements for resident training found in § 21.4265(f);

(ii) A course or subject, leading to a standard college degree, offered in residence on a standard quarter- or semester-hour basis;

(iii) An undergraduate course or subject which requires regularly scheduled, weekly classroom or laboratory sessions, but does not require them in sufficient number to meet the provisions of paragraph (d)(1)(ii) of this section; or

(iv) An undergraduate course or subject leading to a standard college degree which—

(A) Would qualify as a course under paragraph (d)(1)(ii) of this section except that it does not have weekly class instruction.

(B) Requires pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks,

(C) Requires monthly pursuit of a total number of standard class sessions

which, during that month, is required by a course meeting the provisions of paragraph (d)(1)(ii) of this section.

(D) Is considered by the institution offering it as fully equivalent to a course described in paragraph (d)(1)(ii) of this section including the payment of tuition and fees; the awarding of academic credit for the purpose of meeting graduation requirements, and the transfer of credits to a course meeting the provisions of paragraph (d)(1)(ii) of this section and;

(E) Together with all other similar courses offered by the educational institutions, has an enrollment representing less than 50 percent of persons at that institution receiving educational assistance under either chapter 31, 32, 34, 35 or 36, title 38, United States Code.

(2) The Veterans Administration will consider any undergraduate course not listed in paragraph (b) or (f) or (d)(1) of this section to be a resident course during any week when there are regularly scheduled standard class sessions for the course. (38 U.S.C. 1682, 1732, 1788)

(a) *Graduate resident training.* Graduate resident training is a course which—

(1) Is offered through regularly scheduled, conventional classroom or laboratory sessions; or

(2) Consists of research necessary for the preparation of the student's—

(i) Master's thesis,

(ii) Doctoral dissertation, or

(iii) A similar treatise which is a prerequisite to the degree being pursued. (38 U.S.C. 1682, 1732)

(f) *Other training.* The following types of training are considered resident training by the Veterans Administration for measurement and payment when the student combines them with independent study:

(1) A course of student teaching,

(2) An undergraduate course leading to a standard college degree which includes flight training, and

(3) A graduate course consisting of research in absentia. Research in absentia is research pursued off the campus of the educational institution which meets the requirements of paragraph (e)(2) of this section. (38 U.S.C. 1682, 1732)

(g) *Independent study-resident training.* A veteran or eligible person is in independent study-resident training if he or she—

(1) Is enrolled concurrently in one or more courses or subjects offered by independent study as defined in paragraph (c) of this section and one or more courses or subjects offered by resident training as listed in paragraphs (d), (e) and (f) of this section or

(2) Is enrolled in one or more undergraduate subjects which—

(i) Do not meet the requirements of paragraph (d)(1) of this section,

(ii) Have some weeks when standard class sessions are scheduled; and

(iii) Consists of independent study as defined in paragraph (c) of this section during those weeks when there are no regularly scheduled, standard class sessions. (38 U.S.C. 1682, 1732)

(h) *Approval of independent study.* A course or subject offered through independent study or independent study-resident training must be approved as independent study or independent study-resident training by the State approving agency. (38 U.S.C. 1682, 1732)

60. In § 21.4500, the introductory text of paragraphs (d)(2), (e), and (f)(2) are reprinted for the convenience of the reader, paragraphs (d) (1) and (2) (i)(*d*) and (ii), (e) (4) and (6), (f) (1) and (2)(iii) and (h) are revised as follows:

§ 21.4500 Definitions.

* * * * *

(d) *Loan period.* (1) The Veterans Administration will make loans normally for a quarter, semester, summer term or two consecutive quarters.

(2) The Veterans Administration may grant a loan to a veteran or eligible person attending a course not organized on a term, quarter or semester basis if the course requires at least 6 months at the full-time rate to complete. A loan will be granted for not more than 6 months at a time. (38 U.S.C. 1798)

(i) * * *

(*d*) The default rate on all loans ever made to students pursuant to loan programs administered by the Department of Education does not exceed 5 percent or five cases, whichever is greater. (38 U.S.C. 1798(c))

* * * * *

(ii) If a school disagrees with a decision of a Director of a Veterans Administration field station, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education Service. The Director of the Veterans Administration field station shall forward all requests to the Director, Education Service, who shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Veterans Administration field station, but shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met. (38 U.S.C. 1798(c))

* * * * *

(e) *Total amount of financial resources.* This term means the total of the following: * * *

(4) Educational assistance received or receivable for the loan period by the veteran or other eligible person under section 1631, 1661, or subchapter II of chapter 35, title 38, United States Code, which applies solely to the veteran or eligible person. This amount shall be exclusive of an education loan. (38 U.S.C. 1798(b))

* * * * *

(6) Veterans Administration work-study allowance received or receivable by the veteran under section 1685, title 38, United States Code. (38 U.S.C. 1798(b))

(f) *Actual cost of attendance.* (1) This term means—

(i) Actual charge per student for tuition, fees, and books.

(ii) An allowance for commuting. (This allowance will be based on 22.5 cents per mile for distances which shall not exceed normal commuting distance),

(iii) An allowance for other expenses reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled, and

(iv) A room and board allowance.

(2) The room and board allowance shall be determined as follows: * * *

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board or the amount the veteran or eligible person would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board, whichever is the lesser. (38 U.S.C. 1798(b))

* * * * *

(h) *Annual adjusted effective income.* This income shall include:

(1) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration. This includes income from sources such as Veterans Administration compensation and pension, disability retirement, unemployment compensation, welfare payments, social security benefits, etc.

(2) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is

received by the Veterans Administration, less:

(i) Authorized deductions for exemptions;

(ii) Itemized or standard deduction, whichever is greater;

(iii) Mandatory withholdings such as Federal and State income taxes, social security taxes, etc. (38 U.S.C. 1798(b))

* * * * *

61. In § 21.4501, the introductory text of paragraph (d) is reprinted for the convenience of the reader, paragraphs (c)(2) (the introductory text preceding subdivision (i)) and (d)(1) are revised as follows:

§ 21.4501 Eligibility.

* * * * *

(c) *Additional criteria for eligible veterans, spouses and surviving spouses not eligible to receive educational assistance allowance.* * * *

(2) For the purpose of this paragraph (c)(2) the Veterans Administration shall consider a veteran who is enrolled in a flight training course to be enrolled in a program of education on a full-time basis. A loan shall be granted if the eligible veteran, spouse or surviving spouse meets the eligibility criteria found in paragraph (a) of this section and if he or she: (38 U.S.C. 1798)

* * * * *

(d) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

(1) Is pursuing a program of correspondence, flight training for which the veteran is being reimbursed by the Veterans Administration at the 90 percent rate, apprenticeship, or other on-job training, or (38 U.S.C. 1798)

* * * * *

62. In § 21.4502, paragraphs (a) and (b) (1) and (4) are revised as follows:

§ 21.4502 Applications.

(a) *General.* An eligible veteran or other eligible person shall make an application for an education loan in the manner prescribed and upon the forms prescribed by the Veterans Administration. The Veterans Administration must receive the application no later than the last date of the term, quarter, semester, or 6-month period to which all or part of the loan will apply. The application shall be certified by the school as to the date required from the school by the Veterans Administration. (38 U.S.C. 1671)

(b) *Information.* * * *

(1) A statement of nontaxable income for the student for the current tax year in which the application is received by the Veterans Administration; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Veterans Administration less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, social security taxes, etc. (38 U.S.C. 1798(b))

* * * * *

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount, not to exeed 22.5 cents per mile, for commuting normal distances to classes if the student does not reside on campus. Applications may also provide the Veterans Administration with a statement of the amount of charges for room and board which the school would have made had the school provided the veteran or eligible person with room and board. If the school does not provide room and board, the application may provide the Veterans Administration with a statement of charges for room and board which the veteran or eligible person would have received had he or she been provided room and board at the nearest State college or State university which provides room and board. (38 U.S.C. 1798(b))

* * * * *

63. In § 21.4503, paragraph (b) is revised as follows:

§ 21.4503 Determination of loan amount.

* * * * *

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(1) If the costs exceed the available resources by $50 or less no loan shall be granted.

(2) The aggregate of the amounts any veteran or eligible person may borrow for an education loan may not exceed $2,500 in any one academic year. It also may not exceed an amount determined by multiplying the number of months of educational assistance allowance to which the veteran or eligible person is entitled (or would be entitled were it not for the expiration of his or her delimiting period) under section 1661 or subchapter II of chapter 35, title 38, United States Code, on the date he or she commences training during the loan period times—

(i) $327, effective October 1, 1980, for eligible persons and veterans enrolled in a course other than a flight training course,

(ii) $342, effective January 1, 1981, for eligible persons and veterans enrolled in a course other than a flight training course,

(iii) $302, effective October 1, 1980, for veterans enrolled in a flight training course, and

(iv) $317, effective January 1, 1981, for veterans enrolled in a flight training course. (38 U.S.C. 1798(b))

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than 6 months. (38 U.S.C. 1798)

(4) If the loan is a second or subsequent loan for the same flight course, the Veterans Administration will reduce the loan by an amount equal to the amount of the previous loans granted for the course less the actual charges incurred by the veteran during the previous loan periods. (38 U.S.C. 1798)

(5) If the loan is for a flight course and the loan period begins before the ending date of the veteran's prior loan period, the Veterans Administration will reduce the loan by an amount equal to the amount of the prior loan less the amount the prior loan would have been had the Veterans Administration known the actual ending date of the veteran's prior flight course at the time the Veterans Administration calculated the loan. (38 U.S.C. 1798)

(6) The Veterans Administration shall pay the following maximum amounts for these loan periods:

(i) $1,250 for any semester.

(ii) $830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(iii) $1660 for two consecutive quarters.

(iv) $270 per month for a course not leading to a standard college degree if less than 6 months long.

(v) $1660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months long.

(vi) $270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months long. (38 U.S.C. 1798(b))

(7) No amount authorized will be paid by the Veterans Administration until the veteran or other eligible person is

certified as being enrolled and actually pursuing the course.

(8) An eligible veteran or other eligible person may receive more than one loan covering separate loan periods subject to paragraph (b) (3) and (9) of this section.

(9) If the veteran or other eligible person has a material change in economic circumstances subsequent to the orginal application for a loan, he or she may reapply for an increase in an authorized loan or for a loan, if otherwise qualified, if no loan was originally granted. However, the Veterans Administration will not decrease or revoke a loan once granted, absent fraud in the application.

64. In § 21.4504, the introductory text of paragraphs (a) and (a)(3) are reprinted for the convenience of the reader, paragraphs (a)(3)(ii) and (b) are revised as follows:

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in the form of a promissory note which shall include:

* * *

(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student and ending:

* * *

(ii) For loans of less than $600 1 year and 7 months after such date for the first $50 of the loan plus 1 additional month for each additional $5 of the loan. For loan repayment purposes the Veterans Administration considers a flight student to have ceased to be at least a half-time student when he or she fails to complete at least 10 hours of training in any 3-month period. (38 U.S.C. 1798)

* * *

(b) *Interest.* The promissory note shall advise the student that the loan shall bear interest on the unpaid balance of the loan at a rate comparable to, but not in excess of, the rate of interest charged students at such time on loans insured by the Secretary of Education, Department of Education, under part B of title IV of the Higher Education Act of 1965. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount. (38 U.S.C. 1798)

* * * * *

§ 21.4506 [Amended]

65. Section 21.4506 is amended by removing the reference "§ 21.1045(h)" and inserting the reference "21.1045(j)" in paragraph (f).

[FR Doc. 83-22501 Filed 8-19-83; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 5-1

[APD 2800.2 CHGE 31]

Construction Progress Payments—Withholding Funds

AGENCY: Office of Acquisition Policy, Gereral Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations (GSPR), Chapter 5, are amended to implement the Office of Procurement Policy (OFPP) Policy Letter 83-1, date 5-6-83, (48 FR 2 283, 5-20-83). The policy letter provides uniform policy guidance regarding the retention or withholding of funds from progress payments made under Federal construction contracts. The intended effect is to implement the OFPP policy by requiring that funds not be routinely withheld on contracts for construction which are on or ahead of schedule and are otherwise substantially in compliance with the contract requirements.

EFFECTIVE DATE: August 11, 1983

FOR FURTHER INFORMATION CONTACT: Richard H. Hopf, Director, Office of GSA Acquisition Policy and Regulations, (202-566-1224).

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Part 5-11

Administrative practice and procedure, Construction progress payments, Government procurement, Labor surplus areas, Recovered material, Responsible respective contractors, and Small businesses.

41 CFR Part 5-1 is amended by revising § 5-1.371 to read as follows:

PART 5-1—GENERAL

Subpart 5-1.3—General Provisions

§ 5-1.371 Construction progress payments.

(a) Section 1-7.602-7(c) permits full payment of the current monthly progress payment where progress under a construction contract has been determined by the contracting officer to be satisfactory. It is agency policy that contracting officers will not routinely retain funds throughout the term of a contract, and that decisions to retain will be made on a case-by-case basis. Retainage may be used: (1) where performance deficiencies have been identified under the contract or past unsatisfactory performance by the contractor has been experienced and (2) as the contact approaches completion, to ensure that deficiencies will be corrected and that completion is timely.

(b) The level of retainage withheld, if any, shall not exceed 10% in the case of unsatisfactory performance, or 5% where the retainage is to ensure satisfactory completion. Upon completion of all contract requirements, retained amounts shall be paid promptly.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c))

Dated: August 11, 1983.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 83-22974 Filed 8-19-83; 8:45 am]

BILLING CODE 6820-61-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068; FCC 83-146]

Allocation of Spectrum in 928/941 MHz Band and Establishment of Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service.

Correction

In FR Doc. 83-12715 beginning on page 21329 in the issue of Thursday, May 12, 1983, make the following correction:

§ 22.501 [Corrected]

On page 21335, column two, § 22.501(p)(1), column two of the table, second line from the bottom "931.9625 ", the footnote reference should not appear.

BILLING CODE 1505-01-M

47 CFR Part 22

[Gen. Docket No. 81-768; FCC 83-378]

Public Mobile Radio Services; Amendment of the Commission's Rules To Allow the Use of Random Selection or Lotteries Instead of Comparative Hearings for Certain Applicants; Order Granting Stay

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order granting stay of effectiveness.

SUMMARY: Action taken herein stays effectiveness of amendments to § 22.23(a) of the FCC's rules, 47 CFR 22.23(a), adopted in the Second Report and Order in Gen. Docket No. 81–768, 48 FR 27182, 27203 (June 13, 1983). The amendments concerned the selection from among certain competing applicants using random selection or lotteries instead of comparative hearings. The stay is necessary in order for full consideration to be given to the record developed on the issue in CC Docket No. 80–57, concerning revision and update of Part 22 Public Mobile Radio Service regulations, and will remain in effect until action is taken in that docket.

FOR FURTHER INFORMATION CONTACT: Steven A. Bookshester, Office of General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

Order Granting Stay

In the matter of amendment of the Commission's rules to allow the selection from among certain competing applicants using radom selection or lotteries instead of comparative hearings: Gen. Docket No. 81–768.

Adopted: August 5, 1983.

Released: August 9, 1983.

By the Commission:

1. In our *Second Notice of Proposed Rule Making* in the above-referenced proceeding, 91 F.C.C. 2d 911 (1982), the Commission proposed modification of Section 22.23(a) of the common carrier mobile service rules, 47 CFR 22.23(a), regarding amendment of applications.[1] The Commission noted that the rule revisions being contemplated tracked proposals made in the *Notice of Proposed Rule Making* in CC Docket No. 80–57, 47 FR 43842, 43855, published October 4, 1982. In our *Second Report and Order* in the above-referenced docket, 48 FR 27182, published June 13, 1983, the contemplated modification of § 22.23(a) was, at 27198, 27203, adopted as proposed.

2. Upon further consideration, the Commission finds that the public interest would be better served by taking final action on this issue in the context of our deliberations in CC Docket No. 80–57. This will allow for appropriate review of the entire record developed regarding the matter. Therefore, we will on our own motion stay our action in Gen. Docket No. 81–768, as to § 22.23(a). All pleadings submitted in Gen. Docket No. 81–768 regarding § 22.23(a) will be considered in CC Docket No. 80–57 as to that issue.[2]

3. Accordingly, it is ordered, that the effective date of § 22.23(a) of the Commission's Rules, as amended in the Second Report and Order in Gen. Docket No. 81–768, is stayed until further Order of the Commission regarding this matter.

4. It is Further ordered, that pleadings submitted in Gen. Docket No. 81–768 will be considered in CC Docket No. 80–57 as related to amendment of § 22.23(a) of the Commission's rules.

5. Action herein is taken pursuant to Sections 1, 4 (i) and (j), 303 (g) and (r), and 405 of the Communications Act of 1934, as amended, and §§ 1.3, 1.103(a), and 1.429(k) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83–22404 Filed 8–19–83; 8:45 am]

BILLING CODE 6712–01–M

[1] 91 F.C.C. 2d, at 923, n. 20, 934.

[2] This includes the petition for partial reconsideration of our action regarding Section 22.23(a) in Gen. Docket No. 81–768, filed on June 27, 1983, by the law firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–182]

Organization and Delegation of Powers and Duties; Commandant of the Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: DOT revises the Secretary's delegations to the Commandant of the Coast Guard to include convening and approving the Coast Guard Reserve Policy Board (RPB). This will enable the Coast Guard to convene and approve the RPB and manage its Reserve affairs more effectively and efficiently.

DATE: This amendment becomes effective August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. J. Donald Cotter, Office of Reserve, U.S. Coast Guard (202) 426–1017.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

The Act of August 4, 1980, Pub. L. 96–322 completely revised and recodified Chapter 21 of Title 14 U.S. Code, Coast Guard Reserve. Prior to this legislative change, section 753a of Title 14 prescribed that "A Coast Guard Reserve Policy Board shall be convened at least once a year * * *." The 1980 revision recodified section 753a to 703 and provided in pertinent part that "(a) The Secretary shall convene a Coast Guard Reserve Policy Board at least annually * * *." This change provided that the Secretary would both convene and approve the recommendations of the annual Coast Guard Reserve Boards. Previously, this authority was vested in the Commandant of the Coast Guard. This delegation will continue the prior practice of the Commandant convening and approving the recommendations of the Coast Guard Reserve Policy Board, and would allow the most effective resolution of internal Coast Guard issues unique to the Coast Guard Reserve.

The Coast Guard Reserve Policy Board is made up of officer and enlisted personnel from both active and inactive duty. A concerted effort is made to ensure that Board membership is representative of the Coast Guard Reserve community. Each year the board is convened to consider recommendations that have been submitted by Reservists in the field, reviewed by district policy boards and endorsed by the district commanders. Representative topics include officer fitness reports, frequency of Reserve physical examinations, and meal allowance for Reservists on inactive duty training. The Board reviews each recommendation, resolves the usually large number of individual items into issues of basic policy and makes its recommendations to the Commandant with respect to these issues. After determining the actions to be taken on each recommendation, the Commandant publishes the Board Report.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended by adding a new paragraph (jj) to the end of § 1.46, to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(jj) Carry out the functions vested in the Secretary to convene and approve a

Coast Guard Reserve Policy Board as provided in 14 U.S.C. 703.

(49 U.S.C. 322)

Issued in Washington, DC on July 19, 1983.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 83-22949 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

49 CFR Part 192

[Interpretation 83-7]

Transportation of Natural and Other Gas by Pipeline; Installation of Plastic Pipe

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Interpretation.

SUMMARY: The Research and Special Programs Administration (RSPA) is issuing this interpretation of the phrase "vault or any other below grade enclosure" as it appears that phrase appears in paragraph (b) of § 192.321, installation of plastic pipe. The interpretation was requested by the Office of Enforcement field compliance staff. This interpretation clarifies the intent of the phrase.

EFFECTIVE DATE: August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082.

SUPPLEMENTARY INFORMATION:

Interpretation 83-7.

Section: § 192.321(b).

Subject: Installation of plastic pipe.

Facts

1. Section 192.321(b) reads, "Plastic pipe that is installed in a vault or any other below grade enclosure must be completely encased in gas-tight metal pipe and fittings that are adequately protected from corrosion."

2. Some operators are installing plastic valve boxes at the property line and bringing a small loop of the plastic service line into the plastic valve box. Also, some operators are placing concrete meter boxes, plastic valve boxes, and other similar configurations on existing lateral lines. Both of these are installed so that in an emergency the operator can quickly stop the gas flow by squeezing off the plastic pipe.

3. Some operators are inserting polyethylene plastic pipe into PVC for road crossings.

Question: Would § 192.321(b) prohibit these installations?

Interpretation: None of the cases discussed above are included in the intended meaning of "a vault or any other below grade enclosure" as used in § 192.321(b). The intent of this section is to require protection against mechanical or heat damage of plastic pipe and, in the event of a failure, protect the occupants of a vault or other below grade enclosure from the effects of escaping gas. If the plastic pipe in the installations described above is not subject to anticipated mechanical damage or heat damage and the space is not subject to human occupancy, then the casing would serve no useful purpose. However, with regard to the road crossing insertions, if plastic pipe is used as a casing " on a transmission line or main under a railroad or highway," it must meet the requirements of § 192.323, also.

List of Subjects in 49 CFR Part 192

Pipeline safety.

(49 U.S.C. 1672 and 1804; 49 CFR 1.53, Appendix A to Part 1, and Appendix A to Part 106)

Issued in Washington, D.C. on June 27, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 83-22832 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-60-M

---

49 CFR Part 192

[Interpretation 83-6]

Transportation of Natural and Other Gas by Pipeline; Service Line Valve Requirements

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Interpretation.

SUMMARY: The Research and Special Programs Administration (RSPA) is issuing this interpretation of the term "Anticipated heat" as it appears in paragraph (b) of § 192.363, Service line valve requirements. The interpretation was requested by a pipeline valve manufacturer. This interpretation clarifies the intent of the term "anticipated heat" and the appropriateness of certain tests used to determine that a valve does or does not comply with § 192.363(b).

EFFECTIVE DATE: August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082.

SUPPLEMENTARY INFORMATION:

Interpretation 83-6.

Section: § 192.363(b).

Subject: Use of soft-seated valves.

Facts: Section 192.363(b) says, "A soft seat service line valve may not be used if its ability to control the flow of gas could be adversely affected by exposure to anticipated heat."

Question: Does "anticipated heat" refer to a possible fire, or simply hot gas flowing under *normal* operating conditions?

Interpretation: "Anticipated heat" refers to any possible source of heat to which a valve may be exposed, including fire, that would make the valve inoperable. The primary industry standard that has been used to demonstrate the fire resistance of valves is "Fire Test for Soft-Seated Ball Valves," API 607.

List of Subjects in 49 CFR Part 192

Pipeline safety.

(49 U.S.C. 1672 and 1804; 49 CFR 1.53, Appendix A to Part 1, and Appendix A to Part 106)

Issued in Washington, D.C. on May 19, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 83-22831 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-60-M

---

49 CFR Part 192

[Interpretation 83-9]

Transportation of Natural and Other Gas by Pipeline; Use of Plastic Pipe To Transport Carbon Monoxide or Hydrogen

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Interpretation.

SUMMARY: The Research and Special Programs Administration (RSPA) is interpreting the phrase "resistant to chemicals with which contact may be anticipated" as the phrase is used in paragraph (a)(2) of § 192.59. The interpretation is being issued at the request of the Office of Enforcement field compliance staff and it discusses the phrase as it relates to the transportation of carbon monoxide and hydrogen gases.

EFFECTIVE DATE: August 22, 1983.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082.

SUPPLEMENTARY INFORMATION:

Interpretation 83-9.

Section: § 192.59.

Subject: Use of Plastic Pipe to Transport Carbon Monoxide or Hydrogen.

Facts: Section 192.59(a) (1) & (2) states the following:

§ 192.59 Plastic pipe.

(a) New plastic pipe is qualifed for use under this part if—

(1) When the pipe is manufactured, it is manufactured in accordance with the latest listed edition of a listed specification, except that before March 21, 1975, it may be manufactured in accordance with any listed edition of a listed specification; and

(2) It is resistant to chemicals with which contact may be anticipated.

ASTM D2513–81 states the following:

"The pipe, tubing, and fittings covered by this specification are intended for use in the distribution of natural gas or petroleum fuels (propane-air and propane-butane vapor mixtures) where toughness and resistance to flattening, aging, and deterioration from water, gas, and gas additives are required. Use of polyethylene systems with liquefied petroleum gas distribution systems is covered in Appendix X2. Use of other plastic systems covered by this specification with liquid petroleum or manufactured or mixed gas distribution systems is not covered in this specification and should be determined by test prior to use for distribution of these materials."

Questions

1. Does § 192.59, Plastic Pipe, allow gas such as carbon monoxide to be transported in pipe manufactured in accordance with ASTM D2513–81?

2. If it has not yet been determined if it is allowable to tansport CO gas in pipe manufactured in accordance with ASTM D2513–81, what test must be performed by the operator to qualify pipe manufactured in accordance with ASTM D2513–81 for use in transporting CO gas?

3. In addition, has any pipe manufactured in accordance with ASTM D2513–81 been qualified for the transportation of hydrogen gas?

Interpretation

1. Section 192.59 allows carbon monoxide to be transported in pipe manufactured in accordance with ASTM D2513–81 so long as that pipe is also "resistant to chemicals with which contact may be anticipated." (§ 192.59(a)(2)). The Plastic Pipe Institute Technical Report, PPI, TR–19—August 1973, "Thermoplastic Piping for the Transport of Chemicals," lists Poly Vinyl Chloride (PVC) and Polyethylene (PE) pipe manufactured in accordance with ASTM D2513–81 as having good resistance to carbon monoxide. Those pipes would appear to be appropriate for carbon monoxide.

2. Not necessary with answer to 1 above and specific test requirements are outside the scope of § 192.59.

3. In transporting hydrogen gas in plastic pipe the technical report mentioned in 1 above indicates that PVC and PE pipes manufactured in accordance with ASTM D2513–81 have good chemical resistance. Those pipes would appear to be appropriate for hydrogen.

List of Subjects in 49 CFR Part 192

Pipeline safety.

(49 U.S.C. 1672 and 1804; 49 CFR 1.53, Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C. on August 5, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 83–22833 Filed 8–19–83; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 48, No. 163
Monday, August 22, 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

Agricultural Marketing Service

7 CFR Part 1036

Milk in the Eastern Ohio–Western Pennsylvania Marketing Area Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain shipping standards for supply plants regulated under the Eastern Ohio-Western Pennsylvania milk order. This proposed action would reduce from 40 percent to 30 percent for September through November 1983 the quantity of milk that supply plants must ship to distributing plants to maintain pool plant status.

This action was requested by a cooperative association which represents a substantial number of producers associated with the market. The cooperative contends that in the past year this market has experienced a substantial increase in milk production without a corresponding increase in fluid sales. As a result not as much bulk milk from supply plants will be needed to furnish the fluid milk needs of distributing plants during the fall months. Without the suspension, proponent contends that unneeded and uneconomic shipments of supply plant milk would have to be made solely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced and pooled under the order.

DATE: Comments are due not later than August 29, 1983.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the required suspension procedures on the timely basis necessary to make the suspension effective for the month of September 1983, if it is found necessary. The initial request for this action was received on August 9, 1983.

William T. Manley, Deputy Administrator, Agriculture Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers woud continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered for the months of September, October, and November 1983:

In § 1036.7(b), the provisions "not less than 40 percent during the months of September, October and November and" and "in all other months,".

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the suspension effective for September 1983, if this is found necessary.

The comments that are received will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would reduce the quantity of milk that supply plants must ship to distributing plants in order to maintain pool status under the Eastern Ohio-Western Pennsylvania order. The order requires a supply plant to ship 40 percent of its receipts to distributing plants during the months of September through November. In other months the shipping standard is 30 percent. The proposed action would remove the 40 percent standard for the months of September, October and November 1983. As a result, a 30 percent shipping standard for pooling supply plants would apply during these months.

This action was requested by Milk Marketing Inc. (MMI), a coooperative association which represents a substantial number of producers who supply milk to the Eastern Ohio-Western Pennsylvania market. The cooperative states that milk production in this market has increased 8 percent during the first 6 months of 1983 as compared to year earlier levels, while Class I usage has increased less than 2 percent over a comparable period. The proponent believes that this supply-demand imbalance will continue through the fall of 1983. MMI contends that present market environment could result in uneconomic shipments of milk being made solely to assure that producers who historically have supplied the fluid needs of the market will continue to have their milk priced and pooled under the order.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on August 16, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-22914 Filed 8-19-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

Milk in the Iowa Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invities written comments on a proposal to suspend portions of the Iowa Federal milk marketing order for the months of September, October and November 1983. The proposed suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. A cooperative association that operates a plant regulated by the order requested this action to prevent uneconomic movements of milk.

DATE: Comments are due August 29, 1983.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the required suspension procedures on the timely basis necessary to make the suspension effective for the month of September 1983, if it is found necessary. The initial request for this action was received on August 11, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers wuld continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of September, October and November 1983:

In § 1079.13(d) (2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each subparagraph.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the supension effective for September 1983, if this is found necessary.

The comments that are received will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

Farmers Butter and Dairy Cooperative, an association of producers, operates a plant regulated by the Iowa milk order. The cooperative has requested that the 50-percent diversion limitation be suspended for September, October and November 1983. The remaining diversion provisions in the order would permit up to 70 percent of the producer milk receipts to be moved directly from farms to nonpool manufacturing plants and still be priced under the order.

The cooperative said that large supplies of milk in relation to Class I sales in the coming months will require more diversions of milk from farms to manufacturing plants than can be accommodated by the order without the proposed suspension. The cooperative said that the suspension of the 50-percent diversion limitation would allow for a more efficient means of handling the reserve supplies of milk in the Iowa market.

Reserve milk supplies within a marketing order normally decline during the fall months. However, current marketing information indicates that this year the reserve milk supplies for the Iowa market are expected to exceed the quantity of milk that could be diverted to nonpool manufacturing plants under the present diversion limitations and still maintain producer status for all such milk. Under these marketing conditions, a suspension of the 50-percent limitation of the diversion provisions may be appropriate so that producer receipts that are not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. An increase in the diversion limits from 50 percent to 70 percent for each of the months of September, October and November 1983 may tend to prevent the uneconomic handling and movement of reserve milk supplies merely for pooling purposes.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on August 16, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-22913 Filed 8-19-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 23706, Notice No. SC-83-5-CE]

Special Conditions; Soloy Conversions, Ltd., Modified Cessna Model 206 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions as a part of the type certification basis for the Supplemental Type Certification of Soloy Conversions, Ltd. turbine-powered Cessna Models P206-P206E, U206-U206G, TP206A-TP206E, and TU206A-TU206G airplanes. These airplanes will have novel and unusual design features with regard to

the proplusion system in a single engine airplane for which the applicable airworthiness standards of Part 3 of the Civil Air Regulations (CAR) do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided in the regulations for single, reciprocating-engine-powered airplanes.

DATES: Comments must be received by September 21, 1983.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 23706, Room 1558, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 23706. Comments may be inspected in the Rules Docket file between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further action on this proposal. Persons wishing the FAA to acknowledge receipt of their comments, must submit with those comments self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23706." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date, in the Rules Docket file for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking activity will be filed in the public docket.

Type Certification Basis

The type certification basis for the Soloy Conversions Ltd., turbine-powered Cessna Model 206 Series airplanes is as follows:

Part 3 of the Civil Air Regulations (CAR), effective May 15, 1956, through Amendment 3-8, effective December 15, 1962; dual wheel, amphibious float criteria of Special Conditions dated January 14, 1969 and Amendment 1, dated February 20, 1969, effective with airplane serial numbers S/N U20602589, U20602589, U20604650 and up; § 23.1559 effective March 1, 1978; and for all models, Part 23 of the Federal Aviation Regulations (FAR), §§ 23.251, 23.907, and 23.1105, effective February 1, 1965; Amendment 23-7, §§ 23.937, 23.955, 23.1041, 23.1045, 23.1091, 23.1103, 23.1155, 23.1505, and 23.1527, effective September 14, 1969; Amendment 23-14, §§ 23.173, 23.201, 23.929, 23.1017, and 23.1027, effective December 20, 1973; Amendment 23-15, §§ 23.951, 23.997, 23.1013, 23.1015, 23.1019, and 23.1183, effective October 31, 1974; Amendment 23-16, § 23.335, effective February 14, 1975; Amendment 23-17, §§ 23.175, 23.933, 23.977, 23.1111, 23.1143, 23.1165, and 23.1549, effective February 1, 1977; Amendment 23-18, §§ 23.901, 23.939, 23.943, 23.1093, 23.1121, 23.1141, 23.1145, and 23.1337, effective May 2, 1977; Amendment 23-21, §§ 23.45, 23.49, 23.65, 23.75(d), 23.77, 23.1043, and 23.1521, effective March 1, 1978; Amendment 23-23, §§ 23.629(f), 23.1545, and 23.1557, effective December 1, 1978; Amendment 23-26, §§23.253, 23.361, 23.371, 23.903, 23.905, 23.991, 23.1305, and 23.1529, effective October 14, 1980; Part 36 of the FAR, effective December 1, 1969, through Amendment 36-12; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, through Amendment 27-2, and any Special Conditions adopted as a result of this notice.

Background

On October 21, 1982, Soloy Conversions, Ltd., 1769 Bishop Road, P.O. Box 60, Chehalis, Washington 98532, submitted an application for Supplemental Type Certification of turbine-powered Cessna Model 206 Series airplanes which are single engine, unpressurized, 5-seat, excluding pilot seat; that is, 6-place, highwing monoplanes and may be configured as a landplane, a skiplane, a floatplane, or an amphibian. The existing propulsion system is a single 285 continuous horsepower, reciprocating engine. The airplane's maximum gross takeoff weight may vary between 3,300 and 3,600 pounds depending upon the configuration.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) of the FAR do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are issued after public notice in accordance with §§ 11.28 and 11.29(b) of the FAR, effective October 14, 1980, and will become part of the type certification basis, when adopted, in accordance with 21.17(a) of the FAR.

The modification, which is referred to as a Soloy Turbine Pac, includes all items forward of the firewall (powerplant assembly, propeller and cowling) as well as the necessary airplane changes associated with installing a turbine engine as a replacement for a reciprocating engine (fuel system, cabin heat and electrical). The new propulsion system consists of a turbine engine, a reduction gear box, a driveshaft with flexible couplings connecting the engine and gear box together, and the structure needed to support these components and connect the assembly to existing engine firewall attach points. This arrangement is similar to installations in turbine powered helicopters where flight loads are transmitted to the main rotor gear box rather than engine thrust bearings.

The Allison 250-C20S engine as used in the Soloy Turbine Pac is rated at 420-shaft horsepower (SHP) for takeoff and limited to 400-SHP for maximum continuous power. This represents a 40-percent increase in power over the reciprocating engine installation. These power ratings will be available for use as long as the airplane operating limits are not exceeded. The existing airplane operating limits remain unchanged and V_{MO} will be established as equal to the existing V_{NO}.

This modification of the Cessna Model 206 airplane, which installs a turbine engine substantially forward of the orgininal reciprocating engine location, constitutes a novel or unusual design feature for an airplane type certificated to the airworthiness standards incorporated by reference in

the Cessna Model 206 series type certificate, Type Certificate No. A4CE, or under the applicable airworthiness requirements in effect on the date of application for the Supplemental Type Certificate. In 1969, the flutter requirements of § 23. 629 of the FAR were revised to include airworthiness standards for turbopropeller engine installations on small multiengine airplanes. Turbopropeller engine installations, being greater in length than reciprocating engine installations, are more critical with regard to mount flexibility. Forward displacement of the propeller in conjunction with the high rotational speed of the turbine engine and engine mount flexibility may result in significant aerodynamic and elastic inertia forces and cause dynamic instabilities which can adversely affect airplane whirl-flutter stability. Turbine engine installations on single engine airplanes were not envisioned when § 23.629 of the FAR was amended to include a dynamic evaluation of engine-propeller-engine mount stiffness and damping variations in multiengine airplanes. The mount flexibility in the modified Cessna Model 206 Series appears to be of the same order of magnitude as that on multiengine airplanes with wing mounted engines. Thus, the FAA is of the opinion that these factors and their effects on the structural intergrity of the engine mount and airframe should be evaluated with regard to the proposed modification of the Cessna Model 206 Series airplanes.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation and Safety

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Soloy Conversions, Ltd., modified Cessna Model P206–P296E, U206–206G, TP206A–TP206E, TU206A–TU206G airplanes as modified by installation of the Soloy Turbine Pac and a Hartzell three-blade propeller.

Dynamic Evaluation, Engine Installation

In addition to the requirements in CAR 3.311, *Flutter and vibration prevention measures*, the dynamic evaluation of the airplane must include:

1. Whirl mode degree of freedom which takes into account the stability of the plane or rotation of the propeller and significant elastic, inertial, and aerodynamic forces; and

2. Engine-propeller-engine mount stiffness and damping variations appropriate to the particular configuration.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g); (Revised Pub. L. 97–449, January 12, 1983) and SS 11.28 and 11.29(b), Federal Aviation Regulations (14 CFR 11.28 and 11.29(b)))

Issued in Kansas City, Missouri on August 4, 1983.

James O. Robinson,

Director, Central Region.

[FR Doc. 83–22817 Filed 8–19–83; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 25

[Docket No. 23690; Notice No. 83–8A]

Flight After Structural Failure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This Notice announces an extension of the comment period for Advance Notice of Proposed Rulemaking (ANPRM) No. 83–8 (48 FR 31842; July 11, 1983), which invites comments relative to amendment of the airworthiness standards for transport category airplanes to include a requirement that airplanes be capable of continued safe flight and landing after failure of any single, principle structural element and/or obvious partial failure of a large external skin. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed rulemkaing.

DATE: Comments must be received on or before October 12, 1983.

ADDRESSES: Comments on the proposals in Notice No. 83–8 may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, attention: Rules Docket (AGC–204), Docket No. 23690, 800 Independence Avenue SW., Washington, D.C. 20591. Comments delivered must be marked Docket No. 23690. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the office of the Regional Counsel (ANM–7), Federal Aviation Administration, Northwest Mountain Region 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Iven Connally, Regulations and Policy Office (ANM–110), Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431–2120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Notice No. 83–8 is being issued under the FAA's policy for early public participation in rulemaking proceedings. An ANPRM is issued when it is found that reasonable outside inquiry is needed to identify and select a tentative or alternative course of action, or where it would be helpful to invite public participation in identifying and selecting a course of action.

Interested persons are invited to participate in the preliminary rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify Docket No. 23690 or Notice No. 83–8 and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to the notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23690." The postcard will be date/time stamped and returned to the commenter. The proposals contained in Notice No. 83–8 may be changed in light of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of ANPRM

Any person may obtain a copy of Notice No. 83–8 by submitting a request to the Federal Avaition 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 Notice No. 83–8. Persons interested in being placed on the mailing list for future ANPRMs and NPRMs should also request a copy of Advisory Circular No. 11–2, Notice of Proposed

Rulemaking Distribution System, which describes the application procedures.

Background

On July 11, 1983, the FAA issued Notice No. 83–8 (48 FR 31842). In that notice the FAA: (1) Proposed to amend the airworthiness standards for transport category airplanes by including a requirement that an airplane be capable of continued safe flight and landing after failure of any single, principal structural element and/or obvious partial failure of a large external skin; and (2) invited interested persons to submit specific comments, suggestions, and recommendations to assist the FAA in determining a future course of action regarding the proposed rulemaking.

Notice No. 83–8 was issued as the result of a recommendation that the FAA develop a rule requiring assurance that an airplane be designed to continue to fly after structural failure, unless that failure itself prevented the aircraft from flying. Since Notice No. 83–8 was published, requests have been received for extension of the comment period from persons wishing more time in which to study the proposal and to prepare their comments.

Extension of Comment Period

In consideration of the requests to extend the comment period and the need for public participation in determining a future course of action regarding this ruelmaking, the FAA concludes that the comment period should be extended.

Accordingly, the comment period for Notice No. 83–8 is extended to close on October 12, 1983.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation Safety.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.45)

Note.—This document extends the comment period on an advance notice of proposed rulemaking to afford the public and industry with additional time in which to review and respond to the notice. This document is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) as no regulatory or economic burden is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on the comments received as a result of the Notice.

Issued in Seattle, Washington, on August 4, 1983.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 83–22979 Filed 8–19–83; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 83–NM–64–AD]

Boeing Model 737 Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require periodic checks for air leakage into Boeing Model 737 fuel lines contained within the wing fuel tanks. These checks are necessary to detect fuel line deterioration which, in conjuction with loss of fuel boost pumps, can result in simultaneous unrecoverable loss of both engines.

DATE: Comments must be received on or before October 3, 1983.

ADDRESSES: The applicable service bulletin may be obtained from The Boeing Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767–2520. Mailing Address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substances of this proposal will be filed in the rules docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 83–NM–64–AD, 17900 Pacific Highway South, C–68966, Seattle Washington 98168.

Discussion

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Boeing Model 737 series airplanes. One operator reported six flameouts during taxi with fuel boost pumps off. Investigation of these incidents revealed that they resulted from air leakage into fuel feed lines within wing tanks during fuel system suction feed operations at low fuel levels. The air leaks resulted from deterioration of fuel lines flexible seals. Further checks of the remainder of the opeator's fleet revealed fuel system air leaks on five of 28 aircraft. All leaks occurred on aircraft with more than 30,000 flight hours.

These fuel line air leaks can result in simultaneous unrecoverable loss of both engines in flight if the condition is present in conjunction with loss of the aircraft boost pumps. Total AC power loss is one circumstance which would result in loss of boost pumps. The Federal Aviation Administration has determined that this risk of simultaneous loss of all engines is unacceptable and that an inspection is necessary to assure continued airworthiness of the 737 fuel system.

After a careful review of the proposed airworthiness directive (AD) it has been estimated that a total of 300 airplanes will be affected by this AD; it will take less than 1 man hour per airplane to accomplish the proposed inspection, and the average labor cost will be $35 per man hour. Based on these estimates, the total cost of this AD will be $35 per airplane for a total cost of $10,500 to operators of U.S. registered airplanes. Fuel line repair costs have not been included in this estimate since the potential extent of such is unknown. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if

any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737 series airplanes certificated in all categories. To prevent engine flameout due to air ingestion into wing tank fuel lines, accomplish the following unless already accomplished:

A. Perform the inspection described in Boeing Service Bulletin 737–28–1047, dated June 17, 1983, or later FAA approved revision within 500 hours after accumulation of the lesser of 20,000 flight hours or 7 years time in service. Operators whose aircraft have more than either 20,000 flight hours or 7 years time in service on the effective date of this AD must perform this inspection within 500 flight hours.

B. Repeat the inspections required by Paragraph A, above, thereafter at intervals of 3,000 hours or 15 months time in service.

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

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed in the preamble, the FAA has determined that this document involves a proposed regulation that is not major under the provisions of Executive Order 12291. It has been further determined that this proposed regulation is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption **"FOR FURTHER INFORMATION CONTACT."** In addition, it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities since it involves few, if any, small entities.

Issued in Seattle, Washington on August 3, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-22876 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 83-AWP-4]

Proposed Alteration of Restricted Areas R-2516 and R-2517

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Restricted Areas R-2516 and R-2517 located in the vicinity of Vandenberg Air Force Base (AFB), CA. This alteration does not change the current exterior boundaries of R-2516 or R-2517. This action realigns the boundary between R-2516 R-2517 across the entrance of the Santa Ynez River, thereby increasing flight safety for operations in the Vandenberg terminal area while providing additional security for the missile launch missions at Vandenberg.

DATES: Comments must be received on or before Oct 3, 1983.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 83–AWP–4, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AWP–4." 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 § 73.25 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the descriptions of Restricted Areas R–2516 and R–2517 located in the vicinity of Vandenberg AFB, CA. This modification would relocate the common boundary between R–2516 and R–2517 across the mouth of the Santa Ynez River to conform with the Vandenberg local flying regulations. The alteration does not change the existing exterior boundaries of either restricted area. The security of the missile launch site will be increased by restricting all flying south of the Santa Ynez River at Vandenberg. Section 73.25 of Part 73 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 3, 1983.

List of Subjects in 14 CFR Part 73

Restricted areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.25 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

R-2516 Naval Missile Facility Point Arguello, CA [Revised]

Boundaries. Beginning at lat. 35°00'00"N., long. 120°42'00"W.; to lat. 34°54'00"N., long. 120°33'00"W.; to lat. 34°50'00"N., long. 120°32'00"W.; to lat. 34°46'00"N., long. 120°27'00"W.; to lat. 34°42'00"N., long. 120°30'00"W.; to lat. 34°42'00"N., long. 120°40'00"W.; thence 3 NM from and parallel to the shoreline to the point of beginning.
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. Western Space and Missile Center, Vandenberg AFB, CA.
Using agency: Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA. Telephone (C)(805)866-4472/4508; Autovon 276-4472/4508.

R-2517 Naval Missile Facility Point Arguello, CA [Revised]

Boundaries. Beginning at lat. 34°42'00"N., long. 120°40'00"W.; to lat. 34°42'00"N., long. 120°30'00"W.; to lat. 34°39'00"N., long. 120°31'00"W.; to lat. 34°35'00"N., long. 120°32'00"W.; to lat. 34°25'00"N., long. 120°27'00"W.; to lat. 34°24'00"N., long. 120°30'00"W.; thence 3 NM from and parallel to the shoreline to the point of beginning.
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. Western Space and Missile Center, Vandenberg AFB, CA.
Using agency. Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA. Telephone (C)(805)866-4472/4508; Autovon 276-4472/4508.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; [49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)]; and 14 CFR 11.65)

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

Issued in Washington, D.C., on August 10, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-22841 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Treatment During Rehabilitation Under 38 U.S.C. Chapter 31

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendments.

SUMMARY: The Veterans Aministration is amending a series of its medical regulations (38 CFR Part 17) to incorporate amendments made by public law which expanded the scope and circumstances under which eligible veterans may be provided medical and dental services. Public Law 96-466, Veterans' Rehabilitation and Education Amendments of 1980, amended 38 U.S.C. chapter 31 expanding the scope and circumstances under which services are available to veterans under that chapter, including the periods during which eligible veterans may be provided medical and dental services. Previously, these services were available only to those veterans under chapter 31 who were approved for vocational training or education. Consistent with the public law, medical and dental examinations and treatment may now be provided to accomplish the purposes of the initial evaluation, as well as to facilitate the achievement of rehabilitation goals, including needed treatment during the period while assistance is provided in seeking employment.

DATES: Comments must be received on or before September 21, 1983.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulation amendments to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 5, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Fleckenstein, (202) 389-3785.

SUPPLEMENTARY INFORMATION: The Administrator has determined that these amendments to VA regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; nor result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor have significant adverse effects 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 amendments are considered non-significant under the Regulatory Flexibility Act (5 U.S.C. 601-612) as they will not have a significant economic impact on a substantial number of small entities. These amendments provide for the entitlement of individual veterans and their beneficiaries.

These proposed amendments have also been reviewed with respect to the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and are found not to have an impact on the information collection or record-keeping burden on the public.

The Catalog of Federal Domestic Assistance Numbers are 64.009 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: August 8, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows: (Bracketed sentences indicates that the material is new or amended.)

1. In § 17.36, paragraph (b) is revised to read as follows:

§ 17.36 Hospital care and medical services in foreign countries other than the Philippines.

* * * * *

(b) Hospital care or medical services for a veteran who [is participating in a rehabilitation program under 38 U.S.C. chapter 31 and who is medically determined to be in need of hospital care or medical services for any of the

reasons enumerated in § 17.48(g). (38 U.S.C. 624)]

2. Section 17.37 is revised to read as follows:

§ 17.37 Hospital care in the Philippines in facilities other than Veterans Memorial Medical Center.

Hospital care may be authorized in the Republic of the Philippines in facilities other than the Veterans Memorial Medical Center for any United States veteran who is eligible for hospital care under § 17.47 (a) or (b), or a veteran who [is participating in a rehabilitation program under 38 U.S.C. chapter 31 and who is medically determined to be in need of hospital care or medical services for any of the reasons enumerated in §17.48(g). (38 U.S.C. 624)]

3. In § 17.45, paragraph (a) is revised to read as follows:

§ 17.45 Persons entitled to hospital observation and physical examination.

(a) Claimants or beneficiaries of the VA for purposes of disability compensation, pension, [participation in a rehabilitation program under 38 U.S.C. chapter 31,/and Government insurance. [(38 U.S.C. 611(a))]

* * * * *

4. Section 17.48 is amended by adding a new paragraph (g) to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(g) "Participating in a rehabilitation program under 38 U.S.C. chapter 31" refers to any veteran

(1) Who is eligible for and entitled to participate in a rehabilitation program under chapter 31,

(i) Who is in an extended evaluation period for the purpose of determining feasibility, or

(ii) For whom a rehabilitation objective has been selected, or

(iii) Who is pursuing a rehabilitation program, or

(iv) Who is pursuing a program of independent living, or

(v) Who is being provided employment assistance under 38 U.S.C. chapter 31, and

(2) Who is medically determined to be in need of hospital care or medical services (including dental) for any of the following reasons:

(i) Make possible his or her entrance into a rehabilitation program; or

(ii) Achieve the goals of the veteran's vocational rehabilitation program; or

(iii) Prevent interruption of a rehabilitation program; or

(iv) Hasten the return to a rehabilitation program of a veteran in interrupted or leave status; or

(v) Hasten the return to a rehabilitation program of a veteran placed in discontinued status because of illness, injury or a dental condition; or

(vi) Secure and adjust to employment during the period of employment assistance; or

(vii) To enable the veteran to achieve maximum independence in daily living. (38 U.S.C. 1504(a)(9); Pub. L. 96-466, sec. 101(a))

5. In § 17.49, paragraph (a)(3)(i)(C) is revised to read as follows:

§ 17.49 VA policy on priorities for hospital, nursing home and domiciliary care.

(a) * * *

(3) * * *

(i) * * *

(C) A veteran who [is participating in a rehabilitation program under 38 U.S.C. chapter 31 and is medically determined to be in need of hospital care for any of the reasons enumerated in § 17.48(g). (38 U.S.C. 610)]

* * * * *

6. In § 17.50(b), paragraph (c) is revised to read as follows:

§ 17.50b Use of public or private hospitals for veterans.

* * * * *

(c) [*For veterans participating in a rehabilitation program under 38 U.S.C. chapter 31.* The veteran is participating in a rehabilitation program under 38 U.S.C. chapter 31 and is medically determined to be in need of hospital care or medical services for any of the reasons enumerated in § 17.48(g). (38 U.S.C. 601(4)(C))]

* * * * *

7. In § 17.60, paragraph (c) is revised, and paragraph (f) is amended by removing the words "the attending" and inserting the words "a staff". Revised paragraph (c) reads as follows:

§ 17.60 Outpatient medical services for eligible persons.

* * * * *

(c) [*For veterans participating in a rehabilitation program under 38 U.S.C. chapter 31.* A veteran who is participating in a rehabilitation program under 38 U.S.C. chapter 31 is entitled to such medical services as are medically determined necessary for any of the reasons enumerated in § 17.48(g). A veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 may also be furnished in a clinic operated by the VA any examination or immunization necessary for any of the reasons described in § 17.48(g), except the Department of Medicine and Surgery may not authorize incidental transportation. (38 U.S.C. 612)]

* * * * *

§ 17.76 [Amended]

8. Section 17.76 is amended by removing the word "He" at the beginning of the 5th sentence and inserting "The patient"; by removing the words "hospital or" in the 7th sentence and inserting the word "medical"; and by deleting the word "his" in the last sentence.

§ 17.77 [Amended]

9. Section 17.77 is amended by removing the words "he" and "him" and inserting in those places the words "the patient".

§ 17.78 [Amended]

10. Section 17.78 is amended by removing the word "station" in paragraph (a) and inserting the words "medical center"; by adding the words "or her" after "his" in paragraph (a)(1); and by removing the word "his" in paragraph (a)(2).

11. In § 17.80, paragraph (a)(4) is revised to read as follows:

§ 17.80 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.

* * *

(a) * * *

(4) For any illness, injury or dental condition in the case of a veteran who [is participating in a rehabilitation program under 38 U.SC. chapter 31 and who is medically determined to be in need of hospital care or medical services for any of the reasons enumerated in § 17.48(g). (38 U.S.C. 628)]; and

12. In § 17.81, the introductory portion preceding paragraph (a) is revised to read as follows:

§ 17.81 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.

The expenses of repairs to prosthetic appliances, or similar appliances, therapeutic or rehabilitative aids or devices, furnished without prior authorization, but incurred in the care of a service-connected disability (or, in the case of a veteran [who is participating in a rehabilitation program under 38 U.S.C. chapter 31 and who is determined to be in need of the repairs for any of the reasons enumerated in § 17.48(g)]] may be paid or reimbursed on the basis of a timely filed claim, if: [(38 U.S.C 628)]

* * * * *

In § 17.100, paragraph (g)(2) is revised to read as follows:

§ 17.100 Transportation of claimants and beneficiaries.

* * * * *

(g)* * *

(2) Outpatient treatment for service-connected conditions, including adjunct treatment thereof; for veterans under § 17.60 (h) and (i); and for nonservice-connected [disabilities of veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 and who are medically determined to be in need of medical services for any of the reasons enumerated in § 17.48(g),] subject to exceptions defined in paragraph (h) of this section. [(38 U.S.C. 111(b))]

* * * * *

17.120 Authorization of dental examinations.

* * * * *

(f) [Veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 are entitled to such dental services as are professionally determined necessary for any of the reasons enumerated in § 17.48(g). (38 U.S.C. 612(b); ch.31)]

* * * * *

15. § 17.123, paragraph (i) to read as follows:

§ 17.123 Authorization of outpatient dental treatment.

* * * * *

(i) *Class V.* A veteran who [is participating in a rehabilitation program under 38 US.C. chapter 31] may be authorized such dental services as are professionally determined necessary for any of the reasons enumerated in [§ 17.48(g). (38 U.S.C. 612(b); chapter 31)]

* * * * *

[FR Doc. 83-22958 Filed 8-19-83; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-2394-1]

Review of the National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: the Environmental Protection Agency is initiating a review of the primary (health) and secondary (welfare) national ambient air quality standards for ozone. This is in accord with provisions of the Clean Air Act as amended. EPA is taking this action to fulfill its obligation under the Clean Air Act. The effect of the action is to make any necessary changes in the ozone national ambient air quality standard.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Jordan, Strategies and Air Standards Division (MD-12), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-5655, FTS 629-5655.

SUPPLEMENTARY INFORMATION: On April 30, 1971 (36 FR 8186), the Environmental Protection Agency promulgated both the primary (health-based) and secondary (welfare-based) national ambient air quality standards for photochemical oxidants under section 109 of the Clean Air Act, 42 U.S.C. 7409. Those standards were set at an hourly average level of 0.08 parts per million (ppm), not to be exceeded more than 1 hour per year. On February 8, 1979 (44 FR 8202), EPA revised the standards by: (1) Raising both the primary and secondary standards to 0.12 ppm, (2) changing the chemical designation of the standards from photochemical oxidants to ozone, (3) stating the standards in statistical rather than deterministic form, and (4) changing the definition of the point at which the standards are attained to "when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one." The scientific, technical, and medical bases for these standards are contained in the current Air Quality Criteria for Ozone and Other Photochemical Oxidants (EPA-600/8-78-004) published by EPA in April 1978.

Pursuant to sections 108(c) and 109(d) of the Clean Air Act, 42 U.S.C. 7408(c) and 7409(d), as amended, EPA is now reviewing, updating, and revising the criteria document for ozone. Upon completion of this process, a draft of the revised document will be available for review by interested members of the public and will be submitted to the Clean Air Scientific Advisory Committee of EPA's Science Advisory Board for review. A Federal Register notice will announce availability of the criteria document external review draft, which is anticipated by fall 1983. In addition, as EPA develops a staff paper and support documents related to the standard review, the public will also be given notice through the Federal Register of the status and availability of these documents. The public will be provided opportunity to comment through public meetings and/or written comments.

Three major issues are associated with review of oxone standards.

(1) Does new health or welfare information suggest that the level of the primary or secondary standards should be revised?

(2) Does new information suggest a change in the form of the standards (i.e., averaging times, number of exceedances)?

(3) Are ozone-based or total-oxidants based standards more appropriate? It is expected that these and other related issues will form the basis for discussion during review of the ozone standards.

ADDRESS: Docket No. A-83-04, containing material relevant to this standard review, is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M. Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 A.M. and 4:00 P.M. on weekdays, and a reasonable fee may be charged for copying.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Hydro carbons, Ozone, Sulfur oxides, Particulate matter, nitrogen dioxide, Lead.

Dated: August 12, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-22993 Filed 8-19-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 61

[AH-FRL-2418-5]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Inorganic Arsenic

AGENCY: Environmental Protection Agency.

ACTION: Amended notice of public hearing and extension of public comment period.

SUMMARY: The public hearings to be held in Washington, D.C. and Tacoma, Washington for the purpose of receiving comments on the listing of inorganic arsenic as a hazardous pollutant and on the content of the proposed national emission standards for inorganic arsenic have been rescheduled. The end of the comment period has also been extended.

DATES: Two public hearings will be held. One hearing will be held in Tacoma, Washington, on November 2, 1983. This hearing will begin at 9:00 a.m. and may be continued on November 3, 1983, if necessary to provide all persons wishing

to speak an opportunity to do so. Another hearing will be held in Washington, D.C., on November 8, 9, and 10, 1983, beginning at 9:00 a.m. each day. Comments must be received on or before December 10, 1983.

Persons wishing to present oral testimony at the Tacoma hearing must notify Ms. Laurie Kral by October 25, 1983, at telephone number (206) 442–1089 or mailing address: Air Programs Branch, U.S. Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Washington 98101.

Persons wishing to present oral testimony at the Washington, D.C. hearing must notify Mrs. Naomi Durkee by October 31, 1983, at telephone number (919) 541–5578 or mailing address: Standards Development Branch, MD–13, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

ADDRESSES: Hearings. The public hearing to be held in Tacoma, Washington will be held at the Tacoma Bicentennial Pavilion, Rotunda Room 1313 Market Street, Tacoma, Washington.

The public hearing to be held in Washington, D.C., will be held at the Department of Agriculture, Thomas Jefferson Auditorium, South Building, 14th and Independence Avenue SW., Washington, D.C.

Comments. Comments should be submitted (in duplicate is possible) to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 410 M Street SW., Washington, D.C. 20460. Specify the following Docket Numbers:

A–80–40 High-arsenic and low-arsenic copper smelters
A–83–8 Glass manufacturing plants
A–83–9 Secondary lead
A–83–10 Cotton gins
A–83–11 Zinc oxide plants
A–83–23 Primary zinc, primary lead, arsenic chemical manufacturing

FOR FURTHER INFORMATION CONTACT: Naomi Durkee (919) 541–5578.

SUPPLEMENTARY INFORMATION: *Public Hearing.* The hearing in Tacoma, Washington will be for the purpose of receiving comments on the proposed standards for high-arsenic copper smelters. The hearing in Washington, D.C. will consist of two separate sessions. The first session will be for the purpose of receiving comments on the listing of arsenic as a hazardous pollutant. The second session will be for the purpose of receiving comments on the content of the proposed regulations. The order of items on the agenda of the second session will be: (1) high-arsenic copper smelters, (2) low-arsenic copper smelters, (3) glass manufacturing plants, and (4) others. Persons planning to attend this hearing may call Mrs. Naomi Durkee (919) 541–5578 after November 1, 1983, to obtain an estimated time and date at which each subject will be addressed.

Background: On June 5, 1980, EPA listed inorganic arsenic as a hazardous air pollutant under Section 112 of the Clean Air Act. On July 20, 1983, EPA proposed standards in the **Federal Register** (48 FR 33112) for the following categories of sources of emissions of inorganic arsenic: high-arsenic primary copper smelters, low-arsenic primary copper smelters, and glass manufacturing plants. EPA identified other categories of sources emitting inorganic arsenic; but, after careful study, determined that the proposal of standards for these categories of sources was not warranted. These categories of sources are primary lead smelters, secondary lead smelters, primary zinc smelters, zinc oxide plants, cotton gins, and arsenic chemical manufacturing plants.

In the July 20, 1983, **Federal Register** notice, EPA announced the date ending the public comment period on the listing of inorganic arsenic as a hazardous pollutant and on the proposed national emission standards for inorganic arsenic. EPA also announced two public hearings: the first in Washington, D.C., to receive comments on the listing of inorganic arsenic as a hazardous pollutant and on the proposed standards; the second in Tacoma, Washington, to receive comments specifically on the proposed standards for inorganic arsenic emissions from high-arsenic copper smelters.

EPA has received several requests to postpone the public hearings to allow additional time for commenters to prepare their oral testimony. This notice amends the dates of the public hearings in response to those requests. In addition, this notice extends the end of the public comment period to provide an opportunity for submission of rebuttal and supplementary information to testimony presented at the hearings as required by Section 307(d)(5) of the Clean Air Act.

Dated: August 11, 1983.

Charles L. Elkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 83-22610 Filed 8-19-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[SW-4-FRL 2419-6]

Hazardous Waste Management Program—Georgia; Application for Interim Authorization, Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of a public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the Georgia application for Phase II, Component C, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice that if significant public interest is expressed, EPA will hold a public hearing on the application.

DATE: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for September 29, 1983 at 7:00 p.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by September 19, 1983. EPA will determine by September 22, 1983, whether there is significant interest to hold the public hearing. All written comments on the Georgia interim authorization application must be received by the close of business on September 29, 1983.

ADDRESSES: If significant public interest is expressed, EPA will hold a public hearing on Georgia's application for interim authorization on Thursday, September 29, 1983, at 7:00 p.m. in the EPA first floor Conference Room, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–3016.

Written comments on the application and written or telephoned communication of interest in EPA's holding a public hearing on the Georgia application must be sent to: James H. Scarbrough, Chief, Residuals Management Branch, U.S. EPA, 345 Coutland St., N.E., Atlanta, Georgia 30365, 404/881–3016.

If you wish to find out whether or not EPA will hold a public hearing on the Georgia application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after September 22, 1983, the EPA contact person listed below or telephone Mr. John D. Taylor, Program Manager, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, S.W., Room 724, Atlanta, Georgia 30334, 404/656–2833.

Copies of the Georgia interim authorization application for Phase II Component C, are available during normal business hours at the following addresses for inspection and copying:

Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, S.W., Room 724, Atlanta, Georgia 30334, Telephone: 404/656–2833.

Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–4216.

Environmental Protection Agency, Headquarters Library, 401 M Street, S.W., Washington, DC 20460.

Written comments should be sent to: James H. Scarbrough, Chief, Residuals Management Branch, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–3016.

The public hearing will be held at: Environmental Protection Agency, First Floor Conference Room, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Telephone: 404/881–3016.

SUPPLEMENTARY INFORMATION In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect.

The State of Georgia received interim authorization for Phase I on February 3, 1981.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of interim authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

The State of Georgia received interim authorization for Phase II, Components A and B, on May 21, 1982.

In the July 26, 1982 **Federal Register** (47 FR 32378) the Environmental Protection Agency announced that states with qualified programs can be authorized for Phase II Interim Authorization, Component C. Component C published in the **Federal Register** includes standards for permitting of land disposal facilities.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 271, Subpart B (48 FR 14249).

As noted in the May 19, 1980 **Federal Register**, copies of complete State submittals for Phase II interim authorization are to be made available for public inspection and comment. In addition, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 12, 1983.

John A. Little,

Deputy Regional Administrator.

[FR Doc. 83–22939 Filed 8–19–83; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 441

Medicaid Program; Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program

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

ACTION: Proposed rule.

SUMMARY: This proposal would modify present regulations to conform to recent legislative changes enacted by section 2181 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. That section eliminates the penalty which reduces by one percent Federal funds for a States's Title IV–A program, Aid to Families with Dependent Children (AFDC), for any quarter during which a State fails to: (1) inform all AFDC families of the availability of early and periodic screening, diagnosis, and treatment EPSDT services; (2) provide or arrange for requested screening services; and (3) arrange for corrective treatment of health problems found. In addition, section 2181 mandates that States incorporate these three requirements into their State Medicaid plan with respect to all EPSDT eligibles.

Further, this proposed rule would modify current Medicaid EPSDT regulations to reflect Congressional intent that States should continue to develop fully effective EPSDT programs; however, current requirements which entail a large volume of paperwork should be significantly streamlined.

DATES: To assure consideration, comments should be submitted by October 21, 1983.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC–506–P, P.O. Box 26676, Baltimore, Maryland 21207.

In addition please address a copy of your comments on the information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for the Health Care Finance Administration.

If you prefer, you may deliver your comments to Room 309–G Hubert Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309–G of the Department's Office at 200 Independence Ave., S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890.

FOR FURTHER INFORMATION CONTACT: Robert Streimer, (301) 594–9690.

SUPPLEMENTARY INFORMATION:

I. General—Background

In 1967, section 1905 (a)(4)(B) of Title XIX was added to the Social Security (Act) by Pub. L. 90–248, Social Security Amendments of 1967, to provide early and periodic screening, diagnosis and treatment, (EPSDT) for eligibles under 21. The amendment became effective July 1, 1969 and required States to ascertain these children's "physical or mental defects", and to provide "health care, treatment, and other measures to

correct or ameliorate any defects and chronic conditions discovered * * *".

In 1972, section 403(g) was added to the Act by Pub. L. 92-603, Social Security Amendments of 1972. This section provided for a penalty that would reduce by one percent Federal funds for a State's Title IV-A program, Aid to Families with Dependent Children, (AFDC), for any quarter during which a State failed to—

- Inform all AFDC families of EPSDT availability;
- Provide or arrange for requested screening services; and
- Arrange for corrective treatment of health problems found.

Section 2181 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, eliminated section 403(g) of the Act containing the EPSDT penalty. This legislation also amended section 1902(a) of the Act by adding a new paragraph (44) that requires State plans to provide for the following activities—

- Informing all Medicaid recipients under 21, who are eligible for EPSDT under the plan, of EPSDT availability;
- Providing or arranging for requested screening services; and
- Arranging for corrective treatment of health problems found.

The Conference Committee Report accompanying this legislation indicates that Congress expects States to continue to develop fully effective EPSDT programs; however, current requirements which entail a large volume of paperwork should be significantly streamlined (H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 965 (1981)).

In addition, section 131 of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, exempts from Medicaid copayment requirements services provided to children under 18 (or up to 21 at State option).

In developing these proposed regulations, we have worked closely with the EPSDT Technical Advisory Group composed of State Medicaid officials. State agencies and other interested groups such as the American Academy of Pediatrics, the Children's Defense Fund, and the American and National Dental Associations have also offered comments and suggestions regarding requirements that should constitute an effective preventive child health program for Medicaid eligibles.

II. Provisions of Regulations

The provisions of the proposed regulations are discussed below.

A. *Informing.* Section 1902(a)(44) of the Act requires that the State plan provide for informing all Medicaid recipients under 21 who are eligible for EPSDT under the plan, of the availability of EPSDT services. Current regulations specify in detail the exact information that must be given to eligibles in relation to the EPSDT program, the specific manner in which eligibles are to be informed, and the time limits within which the informing must take place (42 CFR 441.75).

We are proposing to simplify and provide for State flexibility in the informing requirement while still requiring that States effectively inform eligibles about EPSDT. Required information would now include the following: the benefits of preventive health care, the services available under the EPSDT program and where and how to obtain those services; that the services under the EPSDT program provided to the EPSDT eligible are without cost to the individual; and that necessary transportation as well as scheduling assistance in order to obtain services is available. We believe this allows States the flexibility to determine how information may be given most appropriately while at the same time assuring that every EPSDT eligible receives the basic information necessary to gain access to EPSDT services.

We are also proposing that the agency provide for a combination of written and oral methods designed to effectively inform all EPSDT eligibles (or their families) of the information required above. This change would give States relief from the mandatory face-to-face informing requirement contained in current regulations, allowing them more flexibility in determining who receives oral information and how it is to be provided.

In addition to methods appropriate for the general EPSDT population, we would require States to effectively inform EPSDT eligibles who are blind or deaf, or who cannot read or understand the English language.

We would require that the State provide assurance to HCFA that processes are in place to effectively inform individuals, generally within 60 days of the individual's initial Medicaid eligibility determination and, if no one eligible in the family has utilized EPSDT services, annually thereafter. Current regulations specifically require that eligible families be informed within 60 days of the eligibility determination. We have become aware that there may be factors which cause administrative delays in informing that are beyond a State's control which, even when a good-faith effort is made, make it difficult for informing to be completed within the specified time limit in all cases. In recognition of this, we have proposed a time frame that is generally within 60 days. This change is intended to accommodate legitimate problems with informing in States.

Finally, States would be required to maintain (as required under 42 CFR 431.17 and 431.18) copies of their rules and policies describing the methods they will use to effectively inform all EPSDT eligibles of the availability of services.

B. *Screening.* Section 1905(a)(4)(B) of the Act establishes the requirement for providing screening services to eligible individuals "* * * to ascertain their physical or mental defects * * *". Current regulations at §§ 441.56 and 441.58(b) contain a screening and assessment package which requires the State agency to provide at least the following services:

- Health and developmental history.
- Unclothed physical examination.
- Developmental assessment.
- Immunizations appropriate for age and health history.
- Assessment of nutritional status.
- Vision testing.
- Hearing testing.
- Laboratory procedures appropriate for age and population groups.
- For children 3 years of age and over, dental services furnished by direct referral to a dentist for diagnosis and treatment.

Screenings, or periodic child health assessments, are regularly scheduled examinations and evaluations of the general health, growth, development, and nutritional status of infants, children, and youth. The cornerstone of the assessment is a thorough medical history and physical examination to determine the general health status of the child. A major component of the periodic assessments is the sequential examination and evaluation of function and performance at regular intervals to determine if the child is progressing normally in all parameters—physical, developmental, nutritional, and emotional. Assessment visits also generally include such preventive measures as determining the need for immunizations, nutritional and anticipatory guidance (i.e., help or assistance to families in understanding what to expect in terms of a child's development), and information about health-related topics such as disease and accident prevention. We recognize that health education efforts by parents and a sound practitioner/patient relationship can have significant positive impacts on the child's health status and that these efforts should be begun at an early age.

In order to be more consistent with medical terminology, at the suggestion of the professional pediatric community, we are modifying the terms "health and

developmental history", "unclothed physical examination", "laboratory procedures appropriate for age and population groups", "vision testing", and "hearing testing", to read "comprehensive health and development history", "comprehensive unclothed physical examination", "appropriate laboratory tests", "appropriate vision testing", and "appropriate hearing testing", respectively. We are not listing the separate developmental and nutritional assessment requirements and the requirement regarding immunization because, by definition, a comprehensive health and developmental history and physical examination should include an assessment of the developmental and nutritional status of the cild and the need for immunizations. (See section C for a discussion of the inclusion of immunizations as a treatment service and the provision of immunization treatment during screening.)

We also propose a modification to the dental screening requirement. Some States have reported difficulties with the current requirement that children 3 years of age or older receive a dental screening by direct referral to a dentist. States have suggested that they need more flexibility because there insufficient numbers of dentists who are willing to participate in the Medicaid program to meet these requirements and that patients may be more manageable and cooperative at a somewhat later age.

However, national dental societies have advocated that a child generally should first see a dentist at age 3. Therefore, we propose to recognize that referrals for the first dental screening generally should occur at age 3, except where the State Medicaid agency adopts a later age limit that reflects reasonable standards of dental practice arrived at by the agency after consultation with recognized dental organizations involved in child health care. In those States, the age could be raised to 4 or, as an outer limit, age 5. However, where any screening (even as early as at the neonatal examination) indicates that dental services are needed at an earlier age, those dental services must be provided by the State. In addition, States may establish an age for dental referral lower than age 3, if they choose. This modification would afford States the necessary flexibility to deal with individual State situations while still maintaining an acceptable standard for preventive dental care.

As was true of current regulations, we do not believe it is appropriate for HCFA to require States to follow specific protocols or procedures in providing screening examinations. This is an area for State determination.

However, we have received many inquiries regarding the acceptability of various standards or methods of providing screening services. To properly address these questions, we proposed to include in the regulations a requirement that screening services be provided in accordance with reasonable standards of medical and dental practice, determined by the agency after consultation with recognized medical and dental organizations involved in child health care.

Finally, we would require that the agency maintain (as required under 42 CFR 431.17 and 431.18) a description of its screening package.

C. *Diagnosis and Treatment.* Diagnosis and treatment are required under section 1905(a)(4)(B) of the Act. Current regulations (42 CFR 441.56(a)) require that, in addition to treatment services regularly included in the State plan for all recipients, States must provide vision, hearing, and certain dental services found necessary on the basis of an EPSDT screening even if those are not otherwise inluded in the plan. We are not proposing to change those requirements.

We wish to clarify that the term "diagnosis" in our proposed regulations appears because of States' concern over the inadvertent omission of the concept in current regulations. We have also included language regarding who is eligible for diagnostic and treatment services and under what circumstances. This does not represent any change in policy or in the intent of the regulations. It merely clarifies that, before treatment can be initiated, there must be some type of screening and diagnosis.

As in the current regulations, the proposed rule allows States significant flexibility to define diagnosis and treatment standards and practices. We have reorganized the current § 441.56 and have included the diagnosis and treatment activities in paragraph (c). Also, because immunizations are, from a medical standpoint, more properly considered a treatment rather than screening service, we are proposing to include them in this paragraph. However, we would propose that in those situations where it is determined at the time of screening that it is medically necessary and appropriate to provide immunization at the time of screening, immunization must be provided at that time.

D. *Discretionary Services.* This section is contained in current regulations at 42 CFR 441.57. We are retaining it in our proposed regulations with no change. It permits States to provide a broad range of health services to EPSDT recipients even if these services are not provided to other recipients, or are provided, but in a lesser amount, duration, or scope.

E. *Periodic Screening.* Periodic screening is required under sections 1902(a)(44) and 1905(a)(4)(B) of the Act. Current regulations at § 441.58 require that States consult with representatives of recognized medical and dental professional groups in developing a periodicity schedule. Further, the State's schedule must—

- Specify the screening services applicable at each stage of a recipient's life up to age 21, including a neonatal examination; and
- Identify the time period, based on the recipient's age in years and months, that defines when screening services will be delivered.

We would change the language in the regulations by requiring that a State implement a periodicity schedule which meets reasonable standards of medical and dental practice determined by the State after consultation with recognized medical and dental organizations involved in child health care. This proposal would preserve State flexibility in designing schedules for screening that are in keeping with their own population needs and resources while assuring that determinations as to services meet professional standards.

We would make a minor change in language to retain the concept and to clarify that EPSDT services for newborns begin with a neonatal examination. We would also remove the language in paragraph (c) of 42 CFR 441.58 concerning the identification of year and month time periods for when screening services will be deliverded since we believe in duplicates the specification of screening services applicable at each stage of life requirement in paragraph (b).

Additional State flexibility is provided by clause (i) of section 1905(a) of the Act (enacted by section 2172 of Pub. L. 97-35) which made changes in Medicaid eligibility rules to now permit States the flexibility to limit coverage, by age, to individuals under age 20, or to individuals under age 19 or 18. We would modify the language in current regulations to include this State option. Therefore, States electing to limit Medicaid coverage to ages 18, 19, or 20, would implement periodicity schedules only up to the age at which individuals are no longer eligible in their State.

We propose to include a provision which would provide that States may

expand their periodicity schedules to permit needed screening services (as determined by the State) in addition to the otherwise regularly scheduled screening services specified in the periodicity schedules. These additional screening examinations would carry the same State responsibility to provide follow-up diagnosis and treatment, the need for which is indicated by screening. This provision would give States additional flexibility to design, implement, and strengthen their EPSDT programs.

In connection with the concept of periodic screening, we would retain the requirement in current regulations at 42 CFR 441.71(a)(2)(i) which specifies that screening be provided to new EPSDT eligibles upon their initial request. We have included this concept in our proposal because we want to assure that new EPSDT eligibles who become eligible at a time when no screening is otherwise scheduled under the periodicity schedule, would receive EPSDT screening upon entry into the Medicaid program. However, because some individuals may become eligible again after a period of ineligibility, States would not necessarily be required to provide screening services to a particular recipient each time he or she became eligible. In any case, the State need not provide screening services requested by the recipient if written verification exists that the requested services duplicate services already provided; i.e., the most recent age-appropriate screening services due under the agency's periodicity schedule have already been provided to the recipient.

F. *Administration.* Current regulations at 42 CFR 441.59 require agencies to identify screening and diagnostic facilities and ensure that services offered by them are available to EPSDT eligibles. We are proposing to delete this requirement in the regulations, since we believe it duplicates an activity implicit in both our informing requirement (which states that all EPSDT eligibles must be informed of the availability of services and how to obtain them) and our basic EPSDT requirement which requires an agency to provide services covered under the State plan to eligible EPSDT recipients who request them.

G. *Continuing Care Providers.* We recognize that EPSDT services ideally should be part of a continuum of care so that the child's screening services are delivered by someone who is familiar with his or her episodes of acute illness and who has an ongoing relationship with the child and family as the regular source of the child's health care.

Therefore, we have added in these proposed regulations the concept of a continuing care provider—one who formally agrees with the Medicaid agency to at least: (1) provide to individuals formally enrolled with the provider, screening, diagnosis, and treatment for conditions identified during screening (within the provider's capacity) or referral to a provider capable of providing the appropriate services; (2) maintain a consolidated health history, including information received from other providers; (3) assure availability of physician services as needed; and (4) submit reports as are reasonably required by the State agency to ensure program accountability. The provider may also agree, at its option, to provide dental services or to make direct dental referrals for dental services required under other sections of these regulations. The provider must specify in the agreement whether dental services or referrals are provided. If the provider does not choose to provide either service, then the provider must refer recipients to the agency to obtain required dental services. Similarly, the provider may agree, at its option, to provide all or part of the transportation and scheduling assistance required under other sections of these regulations (see section I following). The provider must specify in the agreement the transportation and scheduling assistance to be furnished by the provider.

If the provider does not choose to provide this assistance, the provider must refer recipients to the agency to obtain required transportation and scheduling assistance.

States would be expected to maintain a description of the services provided by those continuing care providers and would be required to have methods to assure the providers' compliance with their agreement. We would, then, deem the agency to have met EPSDT requirements for children formally enrolled with a continuing care provider. Where an agreement with a continuing care provider does not provide for all or part of the transportation and scheduling assistance or dental services required under other sections of these regulations the agency would be required to provide services to the extent they are not provided for in the agreement.

These provisions would provide States with the enhanced flexibility to achieve their desired child health program goals through the use of continuing care providers. Implementing the continuing care option would ease case management and other administrative burdens as States could monitor a continuing care provider and the services that the provider delivers, rather than monitoring each enrollee.

We want to clarify our intent in providing for continuing care providers in these regulations. First, we do not wish to imply that by requiring formal enrollment with these providers that our intent is to recognize only prepayment arrangements. Second, continuing care providers are not prohibited under current regulations. Rather, we are now proposing to make specific mention of these providers in regulations to underscore our belief that they can both help to improve the delivery and quality of services, and control costs. Further, some States have told us that specific mention of this class of provider in our regulations is a necessary step if those States are to recognize them within the State Medicaid program. Also, we want to encourage States to enter into arrangements for delivery of continuing care to children. We believe that the proposed deeming provision which is not now contained in current regulations would provide a significant incentive for States to move in this direction.

H. *Coordination With Related Programs and Utilization of Providers.* Current regulations at 42 CFR 441.60, 441.61, and 441.85 deal in general with making use of existing health services where possible in the provision of the EPSDT program.

1. *Title V Coordination.*

Section 441.60, under authority of section 1902(a)(11)(B) of the Act, specifically requires the State agency to ensure that EPSDT recipients who are also eligible for services under Title V of the Act (Maternal and Child Health and Crippled Children's Services) be informed of and referred, if the recipient desires, to those available Title V services that meet the recipient's needs. We are proposing to delete this as a specific section from the EPSDT regulations (but would reference it in a more comprehensive coordination section) for three reasons. First, we believe it duplicates the intent of current regulations § 431.615, which implements sections 1902(a)(11) and 1092(a)(22)(C) of the Act requiring arrangements and agreements between the Medicaid agency and grantees under Title V, State health agencies and State vocational rehabilitation agencies. Second, we are aware that some Medicaid agencies have misinterpreted this section of the current EPSDT regulations as a requirement that they determine Title V eligibility for their EPSDT recipients or as an implication that Medicaid should coordinate exclusively with programs of

Title V. Neither of these implications was intended by HCFA.

Third, the general concept of required coordination with Title V would be referenced in a more comprehensive coordination section, § 441.61, of the regulations. Although we have not maintained a distinct regulation section on Title V alone, we propose nevertheless to continue to emphasize the importance of coordination between Medicaid and Title V as an important means of providing EPSDT services for eligible children. We would make specific mention of required Title V coordination in the coordination section of the regulations and specify that the agency should make use of Title V services in implementing its arrangements for EPSDT.

2. *Other Coordination and Use of Providers.*

We would retain the basic concept of coordination contained in current § 441.61 of the regulations which concerns States' use of related health services available in the State in implementing their EPSDT program. Thus, program overlaps between Medicaid's child health programs and related services provided by other agencies or programs, such as Head Start, Women's and Infant Care (WIC), public health or mental health agencies and certain education programs, would be avoided. We have updated the list of examples of agencies or programs in the regulations to reflect services that may be more current, and to include qualified individual and group providers, an important class of providers in many States. By establishing a more comprehensive list of examples and by requiring States to make available a variety of individual and group providers, we wish to assist and encourage States to take advantage of all resources available to them.

Current § 441.85, which is part of the penalty provisions, requires that an agency provide referral assistance to individuals who need treatment not covered under the State plan, and specifies what that referral assistance must include. Section 1902(a)(44)(C) of the Act specifies that a State plan must directly provide for, or arrange through referral for corrective treatment for health needs disclosed during screening. Therefore, we propose to retain, as a State plan requirement, the content of current § 441.85 and include it in our proposed regulations at § 441.61.

I. *Transportation and Scheduling Assistance.* The contents of current 42 CFR 441.62 requires that the agency provide, if requested, assistance with necessary transportation and scheduling appointments. In recognition of the contribution made by these forms of assistance in assuring that eligible children are able to receive services, we propose to retain this section. We would clarify that only necessary assistance need be provided by the agency.

J. *Timely Provision of Services.* HCFA had established requirements relating to timely provision of services for purposes of implementing the EPSDT penalty. Although the penalty has been repealed, we believe that Federal regulations should still include a set of requirments directed at assuring that services are delivered to children in timely fashion. This implements Congressional intent that States continue to develop fully effective EPSDT programs while paperwork reporting requirements are reduced.

We are therefore proposing that:

—States be required to set standards for timely delivery of services;
—the State's standards must meet reasonable standards of medical and dental practice;
—the State standards must be arrived at after consultation with recognized medical and dental organizations involved in child health care; and
—States must demonstrate that processes are in place to ensure timely delivery of services generally within an outer limit of 6 months from request.

K. *Penalty Regulations.* Current regulations at 42 CFR 441.70–441.90 deal with the specific requirements that a State must meet in order to avoid the imposition of the penalty under section 403(g) of the Act. (Some of these specific requirements are discussed above.) Since section 2181 of the Omnibus Budget Reconciliation Act of 1981 eliminated section 403(g) of the Act, we propose to delete any portions of these regulations that are penalty-related, except for certain concepts that we think should be retained, with some modifications, as State plan requirements. These requirements are authorized under current statute and we believe are necessary for an effective preventive child health program. They include the concepts of informing EPSDT recipients of the availability of services (section A of this preamble); timeliness in conducting informing, screening, diagnosis, and treatment (sections A and J); maintaining certain written administrative materials at the State level (sections A and E); and provision of referral assistance for treatment not covered in the State plan (section H).

L. *Copayments.* Section 1916(a) of the Act precludes States from imposing copayments or similar cost sharing payments on services to categorically and medically needy children under 18 (or up to 21 at State option). Therefore, copayments cannot be applied to EPSDT services for individuals under 16, and are a matter of State option for those age 18 to 21.

III. Impact Analyses

A. Executive Order 12291.

The Secretary has determined that these rules do not meet the criteria for a "major rule" as defined by section 1(b) of Executive Order 12291 because they do not have an economic effect of $100 million or otherwise meet threshold criteria of the Executive Order.

These rules would delete provisions to implement the penalty under section 403(g) of the Act which reduces by one percent Federal funds for a State's Title IV–A program, AFDC, for any quarter a State fails to meet certain requirements detailed earlier in this preamble. While there is the potential for an economic impact on States that might have incurred a penalty, that effect arises from the law eliminating the penalty, not these regulations. In addition, some reduction in State administrative costs would result because of reduced documentation burden. Although no national figures exist for costs associated with documentation, our actuaries have no reason to believe that reductions would approach the criteria for a major rule.

Other provisions of our regulations basically retain requirements contained in current regulations, but allow States more flexibility in designing their EPSDT programs within certain minimum limits. It is not possible to project how many States (and to what extent) will actually take advantage of the increased flexibility available as a result of these proposed amendments.

B. Regulatory Flexibility Analysis.

The Secretary certifies under section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354) that these regulations will not have a significant economic impact on a substantial number of small entities. Section 601(6) defines "small entities" as small businesses, not-for-profit enterprises independently owned and operated and not dominant in their fields, and government jurisdictions serving less than 50,000 persons. These regulations primarily affect State Medicaid agencies by eliminating the penalty under section 403(g) of the Social Security Act, by reducing State administrative documentation burden, and increasing

State flexibility in the implementation of their EPSDT programs. State Medicaid agencies do not represent small governmental jurisdictions as defined under section 601.

In addition, there could be an indirect economic impact on providers as a result of a State exercising its option to deem an agency to have met EPSDT requirements for children formally enrolled with a continuing care provider. This provision encourages States to enter into such arrangements and could change utilization patterns, resulting in increased income for some providers and reduced income for others. While it is not possible to quantify this possible shift in utilization, we expect that shift will be spread among many providers. Therefore, we do not expect that it will result in significant increases or decreases in utilization for a substantial number of providers.

IV. Paperwork Reduction Act of 1980

Sections 441.56(a)(1), 441.56(d), and 441.60(a)(5) of this proposed rule contain information collection requirements. As required by 44 U.S.C. 3504(h), enacted by the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these information colllection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the "ADDRESS" section of this preamble.

IV. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

List of Subjects in 42 CFR Part 441

Abortions, Aged, Early Periodic Screening, Diagonsis, and Treatment (EPSDT), Family planning, Grant-in-Aid program—health, Health facilities, Infants and children, Institutions for mental diseases (IMD), Kidney diseases, Maternal and child health, Medicaid, Mental health centers, Opthalmic goods and services, Penalties, Psychiatric facilities, Sterilizations.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

42 CFR Part 441 Is amended as set forth below:

1. The authority citation for Part 441 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The authority citation for Subpart B is removed.

3. The Table of Contents is amended by revising Subpart B to read as follows:

Subpart B—Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21

Sec.
441.50 Basis and purpose.
441.55 State plan requirements.
441.56 Required activities.
441.57 Discretionary services.
441.58 Periodicity schedule.
441.59 Treatment of requests for EPSDT screening services.
441.60 Continuing care.
441.61 Utilization of providers and coordination with related programs.
441.62 Transportation and scheduling assistance.

3. Subpart B is revised to read as follows:

Subpart B—Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21

§ 441.50 Basis and purpose.

This subpart implements sections 1902(a)(44) and 1905(a)(4)(B) of the Social Security Act, by prescribing State plan requirements for providing early and periodic screening and diagnosis of eligible Medicaid recipients under age 21 to ascertain physicial and mental defects, and providing treatment to correct or ameliorate defects and chronic conditions found.

§ 441.55 State plan requirements.

A State plan must provide that the Medicaid agency meets the requirements of §§ 441.56–441.62, with respect to EPSDT services, as defined in §440.40(b) of this subchapter.

§ 441.56 Required activities.

(a) *Informing.* The agency must—

(1) Provide for a combination of written and oral methods designed to effectively inform all EPSDT eligible individuals (or their families) of the following—

(i) The benefits of preventive health care;

(ii) The services available under the EPSDT program and where and how to obtain those services;

(iii) That the services provided under the EPSDT program to the EPSDT eligible individual are without cost to the individual; and

(iv) That necessary transportation and scheduling assistance described in § 441.62 of this subpart is available to the EPSDT eligible individual upon request.

(2) Effectively inform those individuals who are blind or deaf, or who cannot read or understand the English language.

(3) Provide assurance to HCFA that processes are in place to effectively inform individuals as required under this paragraph, generally, within 60 days of the individual's initial Medicaid eligibility determination and, in the case of families which have not utilized EPSDT services, annually thereafter.

(b) *Screening.* (1) The agency must provide to eligible EPSDT recipients who request it, screening (periodic comprehensive child health assessments); that is, regularly scheduled examinations and evaluations of the general health, growth, development, and nutritional status of infants, children, and youth. (See paragraph (c)(3) of this section for requirements relating to provision of immunization at the time of screening.) As a minimum, these screenings must include, but are not limited to:

(i) Comprehensive health and developmental history.

(ii) Comprehensive unclothed physical examination.

(iii) Appropriate vision testing.

(iv) Appropriate hearing testing.

(v) Appropriate laboratory tests.

(vi) Dental screening services furnished by direct referral to a dentist for childern beginning at 3 years of age, or at an appropriate age which reflects reasonable standards of dental practice determined by the agency after consultation with recognized dental organizations involved in child health care, within an outer limit of age 5.

(2) Screening services in paragraph (b)(1) of this section must be provided in accordance with reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations involved in child health care.

(c) *Diagnosis and treatment.* In addition to any diagnostic and treatment services included in the plan, the agency must provide to eligible EPSDT recipients, the following services, the need for which is indicated by screening, even if the services are not included in the plan—

(1) Diagnosis of and treatment for defects in vision and hearing, including eyeglasses and hearing aids;

(2) Dental care, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health; and

(3) Appropriate immunizations. (If it is determined at the time of screening that immunization is medically necessary and appropriate to provide at the time of screening, then immunization treatment must be provided at that time.)

(d) *Accountability.* The agency must maintain as required by §§ 431.17 and 431.18 —

(1) Records and program manuals;

(2) A description of its screening package under paragraph (b) of this section; and

(3) Copies of rules and policies describing the methods used to assure that the informing requirement of paragraph (a)(1) of this section is met.

(e) *Timeliness.* With the exception of the informing requirements specified in paragraph (a) of this section, the agency must set standards for the timely provision of EPSDT services which meet reasonable standards of medical and dental practice, as determined by the agency after consultation with recognized medical and dental organizations involved in child health care, and must demonstrate that processes are in place to ensure timely service delivery, generally within an outer limit of 6 months from a request for services.

§ 441.57 Discretionary services.

Under the EPSDT program, the agency may provide for any other medical or remedial care specified in Part 440 of this subchapter, even if the agency does not otherwise provide for these services to other recipients or provides for them in a lesser amount, duration, or scope.

§ 441.58 Periodicity schedule.

The agency must implement a periodicity schedule for screening services that—

(a) Meets reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations involved in child health care;

(b) Specifies screening services applicable at each stage of the recipient's life, beginning with a neonatal examination, up to the age at which an individual is no longer eligible for EPSDT services; and

(c) At the agency's option, provides for needed screening services as determined by the agency, in addition to the otherwise applicable screening services specified under paragraph (b) of this section.

§ 441.59 Treatment of requests for EPSDT screening services.

(a) The agency must provide the screening services described in § 441.56(b) upon the recipient's initial request following initial Medicaid eligibility.

(b) To avoid duplicate screening services, the agency need not provide requested screening services to an EPSDT eligible if written verification exists that the most recent age-appropriate screening services, due under the agency's periodicity schedule, have already been provided to the eligible.

§441.60 Continuing care.

(a) *Continuing care provider.* For purposes of this subpart, a continuing care provider means a provider who has an agreement with the Medicaid agency to provide reports as required under paragraph (b) of this section and to provide at least the following services to eligible EPSDT recipients formally enrolled with the provider:

(1) With the exception of dental services required under § 441.56, screening, diagnosis, treatment, and referral for follow-up services as required under this subpart.

(2) Maintenance of the recipient's consolidated health history, including information received from other providers.

(3) Physicians' services as needed by the recipient.

(4) At the provider's option, provision of dental services required under § 441.56 or direct referral to a dentist to provide dental services required under § 441.56(b)(1)(vi). The provider must specify in the agreement whether dental services or referral for dental services are provided. If the provider does not choose to provide either service, then the provider must refer recipients to the agency to obtain those dental services required under § 441.56.

(5) At the provider's option, provision of all or part of the transportation and scheduling assistance as requried under § 441.62. The provider must specify in the agreement the transportation and scheduling assistance to be furnished. If the provider does not choose to provide some or all of the assistance, then the provider must refer recipients to the agency to obtain the transportation and scheduling assistance required under § 441.62.

(b) *Reports.* A continuing care provider must provide to the agency any reports that the agency may reasonably require.

(c) *State monitoring.* If the State plan provides for agreements with continuing care providers, the agency must have methods to assure the providers' compliance with their agreements.

(d) *Effect of agreement with continuing care providers.* Subject to the requirements of paragraphs (a), (b), and (c) of this section, HCFA will deem the agency to meet the requrements of this subpart with respect to all EPSDT eligible recipients enrolled with the continuing care provider.

(e) If the agreement in paragraph (a) of this section does not provide for all or part of the transportation and scheduling assistance required under § 441.62, or for dental service under § 441.56, the agency must provide for those services to the extent they are not provided for in the agreement.

§ 441.61 Utilization of providers and coordination with related programs.

(a) The agency must provide referral assistance for treatment not covered by the plan, but found to be needed as a result of conditions disclosed during screening and diagnosis. This referral assistance must include giving the family or recipient the names, addresses, and telephone numbers of providers who have expressed a willingness to furnish uncovered services at little or no expense to the family.

(b) The agency must make available a variety of individual and group providers qualified and willing to provide EPSDT services.

(c) The agency should make appropriate use of other related programs such as Title V, Maternal and Child Health and other public health or mental health programs, Head Start,Title XX (Social Services), and certain education programs to ensure an effective child health program.

§ 441.62 Transportation and scheduling assistance.

The agency must offer to the family or recipient, and provide if the recipient requests—

(a) Necessary assistance with transportation as required under § 431.53 of this chapter; and

(b) Necessary assistance with scheduling appointments for services.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 25, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 12, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-22477 Filed 8-19-83; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6514]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Minnesota

Correction

In FR Doc. 83-21637, beginning on page 36165 in the issue for Tuesday, August 9, 1983, make the following corrections:

1. On page 36165, the **Federal Register** page number appearing in the last line of the **"SUMMARY"** paragraph in column two should read, "20951".

2. On page 36166, the last entry in the last column of the table should read, "*893".

BILLING CODE 1505-01-M

44 CFR Part 67

[Docket No. FEMA-6547]

National Flood Insurance Program; Proposed Flood Elevation Determinations

Correction

In FR Doc. 83-20247, beginning on page 34083 in the issue of Wednesday, July 27, 1983, make the following corrections:

1. In the table on page 34085, in the second column under the heading "#Depth in feet above ground *Elevation in feet (NGVD)", the second entry for the state of Michigan, Detroit, Wayne County, should read, "*599".

2. Also in the table on page 34085, the zip code appearing at the end of the last line of type in the portion of the table for Michigan, Detroit, Wayne County, should read, "48226".

BILLING CODE 1505-01-M

44 CFR Part 67

[Docket No. FEMA-6554]

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.

DATES: 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, 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 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 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 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 USC 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 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 requirements; 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

City/town/county	Source of flooding	Location	*Elevation in meters (MSL)
Commonwealth of Puerto Rico: Lajas Valley	Rio Loco	Center of Puerto Rico Highway 332, 110 meters south of its intersection with Puerto Rico Highway 116.	*6.0
		At the intersection of Puerto Rico Highways 116 and 389.	*23.8
	Caribbean Sea	South end of Puerto Rico Highway 332, approximately 1.45 kilometers south of its intersection with Puerto Rico Highway 116.	*2.1

Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.

Send comments to the Honorable Carlos Romero Barcelo, La Fortaleza, San Juan, Puerto Rico 00902.

Commonwealth of Puerto Rico: Rio Humaco Basin	Rio Humacao	At the intersection of San Jose and Diana Streets.	*20.0
		At the interesection of Calle Jesus Maria Rivera and Calle Velaquez.	*24.0
	Quebrada Mabu	At the interestion of Ulises Martinez Street and Padre Rivera Avenue.	*21.2
	Quebrada Mariana	At the intersection of stream and Camino Las Chorras.	*26.0

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

City/town/county	Source of flooding	Location	*Elevation in meters (MSL)
	Atlantic Ocean	At the mouth of Rio Humacao	*2.7

Maps available for inspection at Puerto Rico Planning Department, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.

Send comments to Honorable Carlos Romero Barcelo, La Fortaleza, San Juan, Puerto Rico 00902.

Commonwealth of Puerto Rico: Rio Yaguez Basin	Rio Yaguez	40 meters upstream from the center of Calle Post.	*9.5
		At the intersection of Avenida Comercio and Calle McKinley.	*0.9
	Atlantic Ocean	West end of Calle McKinley, 90 meters west of its interesection with Avenida Comercio.	*1.6

Maps available for inspection at Puerto Rico Planning Department, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.

Send comments to Honorable Carlos Romero Barcelo, La Fortaleza, San Juan, Puerto Rico 00902.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: August 19, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-22934 Filed 8-19-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6535]

National Flood Insurance Program, Proposed Flood Elevation Determinations

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 27560 on June 16, 1983. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Village of Sylvan Beach, Oneida County, New York.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, 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 Village of Sylvan Beach, Oneida County, New York, previously published at 48 FR 27560 on June 16, 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.

Under the Source of Flooding of Erie Canal, the base flood elevation for the entire shoreline within the community has been amended to read 373 feet in elevation.

(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: August 10, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-22932 Filed 8-19-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6526]

Proposed Flood Elevation Determinations; Ohio; 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 for selected locations in the City of Whitehall, Franklin County, Ohio, previously published at 45 FR 24746 on June 2, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, 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 City of Whitehall, Franklin County, Ohio previously published at 45 FR 24746 on June 2, 1983, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 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)).

The proposed base flood elevation determination on Mason Run, which reads about 0.08 mile upstream of Broad Street which was inadvertently published as 795* should read 793*.

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, Floodplains.

The listing appears correctly as follows:

State	City/ Town/ County	Source of Flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD).
Ohio	(C) Whitehall.	Mason Run.	About 0.08 mile upstream of Broad Street.	* 793

(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: August 10, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-22931 Filed 8-19-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-345; FCC 83-377]

Amendment of Syndication and Financial Interest Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this proceeding the Commission reviewed its network television financial interest and syndication rules to determine if they continued to be necessary or if they could be eliminated so as to decrease governmental restrictions without adversely impacting on the functioning and competitiveness of the national television distribution system. This review was commenced after the Commission's Network Inquiry Special Staff concluded that the rules were unnecessary and were not accomplishing their intended purposes. The Commission concluded that the financial interest rule could be eliminated without injury to the public but that a modified syndication rule should be retained. The Commission issued a Tentative Decision and Request for Further Comment and sought further comment on this resolution of the proceeding.

DATES: Comments due September 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman or Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Tentative Decision and Request for Further Comments

In the matter of amendment of 47 CFR 73.658(j)(1)(i) and (ii), the Syndication and Financial Interest Rules; BC Docket No. 82–345.

Adopted: August 4, 1983.

Released: August 12, 1983.

By the Commission. Commissioner Quello concurring in part and dissenting in part and issuing a statement; Commissioner Rivera dissenting in part and issuing a statement.

Table of Contents

I. Introduction and Background
- Introduction
- Summary of Tentative Decision and Request for Further Comments
- Historical Background of the Rules

II. Comment Summary
- Effects of the Rules on the Production Industry
- Effects of the Rules on Television Broadcast Stations
- Effects of the Rules on Advertising Costs
- Effects of the Rules on Television Costs
- Effects of the Rules on New Television Networks
- Alternative Regulatory Proposals
- Additional issues

III. Discussion
- Legal and Policy Context of Rules
- Economic Context of Rules—the Video Industry
- Effects of the Rules on the Network-Producer Relationship
- Effects of the Rules on the Syndication Market
- Effects of the Rules on Television Networks
- Effects of the Rules on New Networks

IV. Conclusions and New Regulations
- Regulation of Network/Producer Relationships
- Network Participation in Program Syndication
- Comments Requested on Tentative Decision

I. Introduction and Background

Introduction

1. In this proceeding through our *Notice of Proposed Rule Making in BC Docket 82–345*, 47 FR 32959 (1982), we sought comment on a proposal to repeal the network television financial interest and syndication rules. The rules, 47 CFR 73.658(j), regulate the rights the national television broadcast networks may acquire or retain in programming used for network distribution.

2. A brief description of the process of network program development will help place these rules and this proceeding in perspective. The prime time entertainment series that are aired on the networks are generally produced by the major film studios, major independent producers or minor independent producers. The networks serve as producers of a small number of their own programs, but their production activity is limited by the respective consent decrees that each has entered into with the Department of Justice.

3. The process of developing an entertainment series varies among the networks, although there are some common elements. In general, program ideas come from network development departments or producers. A producer can either present an idea directly to a network or to the network through an agent or major studio. A program passes through four stages of development: (1) The treatment; (2) a pilot script; (3) a pilot; and (4) series production. The network development departments finance the first three stages and may terminate the process at any point. The financial terms negotiated between networks and producers at the developmental stages vary greatly, but may include fees, delivery dates, options and possibly the license fee if the program should become a series. Since pilots are expensive, relatively few are made in proportion to the number of treatments and scripts ordered by the networks, and only a fraction of the pilots that are made become series. For example, CBS had pilots made for 32 shows out of the 155 scripts it had ordered for the 1982–83 TV season. From these 32 pilots, 13 new prime time series were created.

4. The producer of a TV series is paid a license fee by the network for each

episode produced. The license fee entitles the network to exclusive rights to air the program for a period of time. Typical license fees are about $300,000 for a half hour show and approximately $600,000 for an hour series. License fees can be renegotiated during the run of a series.

5. Successful network programs have value beyond their network run. They can be sold to individual stations through the syndication market. Syndicators may be studios, multiple station groups, advertisers or companies set up specifically to act as syndicators. Under individual contract terms, off-network syndication may begin following the expiration of the licensing network's exclusivity protection for each episode. The most important characteristic common to all off-network syndicated programs is that they have achieved successful network runs in prime time. For a program to be syndicatable, it must have run long enough on the network to have approximately 80–100 episodes. The large number of episodes is required because the off-network syndicated series is usually broadcast daily, in the same time period, a practice known as stripping.

6. The rights to syndicate a program are often negotiated early in the production process. An established producer may even be able to obtain a cash advance from a syndicator based on prospective syndication of a series. The negotiations between producers and syndicators focus on the basic arrangements for dividing syndication revenues, the duration of the syndication rights, the territory where the program may be sold, and any cash advances. A syndicator operates by contacting stations individually and, if enough stations are willing to buy a particular program, then the off-network show feasibly can go into syndication. The price a station pays for a syndicated show is largely dependent on the station's market size. In recent years, local stations in New York and Los Angeles have paid as much as $90,000 per episode for a syndicated program. Typically, syndicators keep 30% to 40% of the syndication revenues as their fee. Out of this, they pay their operating expenses, which normally include only the costs of distributing the program and the residuals fees that must be paid to actors.

7. The financial interest and syndication rules place several constraints on how the networks may behave in the process described above. The *financial interest* rule provides that no network shall:

> * * * acquire any financial or proprietary right or interest in the exhibition, distribution, or other commercial use of any television program produced wholly or in part by a person other than such television network, except the license or other exclusive right to network exhibition within the United States and on foreign stations regularly included within such television network.* * *

The *syndication rule* provides that no network shall:

> * * * sell, license, or distribute television programs to television station licensees within the United States for non-network television exhibition or otherwise engage in the business commonly known as "syndication" within the United States; or sell, license, or distribute television programs of which it is not the sole producer for exhibition outside the United States; or reserve any option or right to share in revenues or profits in connection with such domestic and/or foreign sale, license, or distribution.* * *

Under the rules, a network can only purchase the rights from a producer to air a program over the network's distribution system. In the absence of the rules, the networks could negotiate for a financial interest and participation in syndication rights. For programs wholly produced by the networks, the rule requires that, if the program is to be syndicated, the networks must sell their syndication rights to others.

8. The *Notice* in this proceeding questioned whether these rules could reasonably be expected to promote their intended goals of television program and outlet diversity. Comment was also sought on whether the rules were necessary in today's video marketplace given the emergence of various competitive electronic media.

9. In response to the *Notice*, more than 120 formal written comments were received, many containing detailed economic studies on the functioning of the rules and the markets affected by them. The preparation of these comments was facilitated by unusually long comment and reply comment periods. In addition to the written comments, oral proceedings were held at which 40 parties argued their positions to the Commission.

Summary of Tentative Decision and Request for Further Comments

10. Our own review of the rules and the responses to the *Notice* in this proceeding have persuaded us that the rules are in need of very substantial revision. While the continuation of some measure of regulatory control relating to the licensing and use of off-network programming does appear to be appropirate, it does not appear that the financial interest rule is either necessary or desirable. A detailed review of the analysis leading to these conclusions is set forth in the *Discussion* and *Conclusion* sections of this document. However, at this point we will provide a brief overview of the changes we are undertaking.

11. First, it does not appear that it is necessary to control the ability of the networks to bargain for and acquire passive "financial interests" in programs purchased or produced for network exhibition.

12. Second, we will continue to prohibit network participation in the domestic syndication of prime time entertainment program series. Thus, the scope of the syndication prohibition would be narrowed to include only participation in *domestic* syndication markets and to cover only *prime time series* programs (as defined below) rather than all types of programming.

13. Third, programming in which a network retained any continuing off-network "financial interest," would in every case have to be made available for syndicated sale within six months after the end of the network exhibition "run." Moreover, for series that run for more than five years, the network would have to make the series available for syndication no later than the end of the fifth year of the network exhibition. We also believe that it may be appropriate to "sunset" the syndication restrictions that are maintained, in 1990, unless the Commission makes an affirmative public interest finding that they should continue in effect.

14. In short, our tentative decision is to eliminate the financial interest rule while narrowing the syndication rule to ensure against possible network incentives to restrict the availability of the most critical off-network programming for independent television station use. While financial and syndication rights are not unrelated, it is not uncommon in the entertainment world to separate passive profit sharing interests from interests that involve active management control and we see no reason why a similar type of separation cannot be used effectively to further our objectives here. It appears from the record that the other restraints of the rules were either initially misguided or are no longer necessary in light of evolving market conditions and we intend to eliminate them. However, we will herein seek additional comments to fine tune the syndication prohibition of the rules, to ensure that it provides appropriate protections but does not unnecessarily interfere with the conduct of normal negotiations between networks and producers. While the basic elements of these alternative

forms of regulation have been set forth as options in a number of the comments received, and thus have already been the subject of some discussion, we believe replies focused more specifically on the attached rules would be useful.

Historical Background of the Rules

15. In 1959 the Commission instituted an investigatory proceeding designed to obtain information relating "to the policies and practices pursued by the networks and others in the acquisition, ownership, production, distribution, selection, sale and licensing of programs for television exhibition. . . ." *Order for Investigatory Proceeding, Docket 12782*, 24 FR 1605.[1] Based on the results of this inquiry, the Commission issued a *Notice of Proposed Rule Making* in 1965 which proposed adoption of rules designed to correct a perceived competitive imbalance in the program production and distribution industries. *Competition and Responsibility in Network Television Broadcasting*, 45 F.C.C. 2146. In that *Notice* the Commission stated:

> The information and data before the Commission appear to establish that network corporations, with the acquiesence of their affiliates, have adopted and pursued practices in television program procurement and production through which they have progressively achieved virtual domination of television program markets. The result is that the three national network corporations not only in large measure determine what the American people may see and hear during the hours when most Americans view television, but also would appear to have unnecessarily and unduly foreclosed access to other sources of programs. *Id.* at 2147.

The original purposes of the proposed rules were to provide an opportunity for the entry of more competitive elements into the market for television programs for network exhibition and to encourage the growth of alternate sources of television programs for both network and non-network exhibition. *Id.*

16. The Commission stated that the undue concentration of control in the three networks over television programs was inherently undesirable because diversification of economic interests and power in this area was a cardinal principle of the public interest standard found in the Communications Act. Concentration also decreased the competitive opportunity for independent program producers and the syndication industry, the success of which was considered vital to the further development of the television service, especially UHF stations. Finally, the Commission found the networks' acquisition of financial interests and syndiction rights a conflict of interest. The Commission reasoned that networks would be guided in their programming decisions more by their attainment of such interests in the programming than their objective judgments as to whether the programs were likely to serve the public interest. *Id.* at 2157. The Commission stated that the presence of networks as domestic syndicators was inherently indesirable because they were in the position of selling programs to independent stations that directly competed with the networks' affiliates.

17. Based on these concerns, the Commission adopted the financial interest and syndication rules in 1970. *Report and Order in Docket 12782*, 23 FCC 2d 382 (1970).[2] According to the Commission's statements in the *Order* affirming the financial interest and syndication rules on reconsideration, the regulations had two principal purposes: to lessen the bargaining power of the networks, and to remove the possibility that acquisition of subsidiary financial and syndication rights would become a prerequisite to network exhibition. 25 F.C.C. 2d 318, 331 (1970). The Commission expressed its opinion that the rules would greatly enhance independent producers' abilities to operate in the network television program market and would also remove the possibility of networks taking advantage of their relationships with affiliates in their syndication dealings. *Id.* The Commisssion concluded that the rules would tend to improve the bargaining positions of producers with networks so as to bring about a desirable degree of expansion of stable and viable program sources. *Id.* at 332. On appeal the rules were sustained by the U.S. Court of Appeals for the Second Circuit in *Mt. Mansfield Television, Inc. v. F.C.C.*, 442 F.2d 470 (2nd Cir. 1971).

18. In 1972 the United States Department of Justice filed antitrust suits against the three networks, asserting that:[3]

(a) Ownership and control of television entertainment programs broadcast during prime time hours were concentrated among the three networks;

(b) Competition in the production, distribution, and sale of television entertainment programs, including feature films, had been unreasonably restrained;

(c) Competition in the sale of television entertainment programs to the three networks by outside suppliers had been unreasonably restrained; and,

(d) The viewing public had been deprived of the benefits of free and open competition in the broadcasting of television entertainment programs.

NBC entered into a consent decree with the Department of Justice in 1978 and ABC and CBS entered into similar consent decrees in 1980.[4]

19. These consent decrees, which are currently in effect, impose restraints on network practices that both include and surpass the restrictions imposed by the Commission's syndication and financial interest rules. For example, while both the rules and the consent decrees permit foreign syndication of programs wholly produced by a network, the consent decrees impose a requirement not contained in the Commission's rule for foreign syndication of foreign-produced programs: that the foreign syndication rights must be obtained in negotiations separate from those for domestic syndication licensing.[5] Similarly, whereas both the rules and consent decrees permit acquisition of non-broadcast rights, the consent decrees permit acquisition of such rights only when negotiated separately from those for a broadcast license.[6]

20. In 1977, the Commission instituted its latest network inquiry. *Commercial Television Network Practices*, 62 F.C.C. 2d 548 (*Notice of Inquiry* 1977). The inquiry was intended to focus specifically on the relationships between networks and affiliate stations

---

[1] A detailed review of the Commission's continuing interest in networking can be found in the following reports issued by the Network Inquiry Special Staff in Docket 21049: *The Historical Evolution of the Commercial Network Broadcast System Leading to Adoption of the Prime Time Access Rule, the Financial Interest Rule, and the Syndication Rule*, Dockets 12782 and 19622 (October 1979); and, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (October 1980) (hereafter, Network Inquiry Staff Report).

[2] At the same time, the Commission adopted the prime time access rule, 47 CFR 73.658(k), which limits the amount of network programming that can be broadcast during prime time in the top 50 markets.

[3] The suits were dismissed on procedural grounds but were refiled in 1974.

[4] *United States v. National Broadcasting Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978), *aff'd mem.* No. 77-3381 (9th Cir. April 12, 1978), *cert. denied sub nom. CBS v. U.S. District Court for Central Division of Calif.*, 48 U.S.L.W. 3186 (1979); *United States v. CBS Inc.*, Civ. No. 74-3599-RJK (C.D. Cal. July 31, 1980), *reprinted in* 45 Fed. Reg. 54465. *United States v. ABC, Inc.*, Civil No. 74-3600 (C.D. Cal.), *reprinted in* 45 Fed. Reg. 58441.

[5] Although the language of the syndication rule is somewhat vague, the Commission has subsequently indicated that the rule was not intended to cover the acquisition of foreign-produced programs for foreign distribution. *Memorandum Opinion and Order*, 26 F.C.C. 2d 28, 31 n.3 (1970).

[6] The Commission explicitly found that non-broadcast interests could be acquired irrespective of whether acquired in separate negotiations. Memorandum Opinion and Order, 87 F.C.C. 2d 30, 35 (1981), *petition for review denied sub nom., Viacom Int'l v. F.C.C.*, 672 F.2d 1034 (2d Cir. 1982).

to consider the extent to which licensee programming discretion was being subverted by the networks. A concommitant issue under consideration was whether networks had maintained anti-competitive policies which had unduly restricted the development of programming sources. 62 F.C.C. 2d at 548–49. In a *Further Notice of Inquiry* adopted the next year, the Commission summarized its concerns in the following manner:

> First, in judging the performance of the industry, we are primarily concerned with "protecting the interest of the public in receiving the best possible programming service. * * *" The economic well-being of networks, stations or program suppliers is, thus, important only to the extent that it affects their ability to serve the public. Second, while a wide variety of specific practices is identified for analysis, we are centrally concerned about whether these practices enable the existing major commercial networks, in their relations with affiliates and program suppliers, to limit the opportunities for others to compete for station broadcast time and thereby exert an anti-competitive influence upon the industry's behavior. *Further Notice of Inquiry*, 69 F.C.C. 2d 1524, 1528 (1978).

The Commission also expanded the scope of the inquiry to include an examination of the structure of the television industry and the extent to which structural remedies might be applied to ease the pressures created by the three network system of program procurement and distribution.

21. After extensive research and analysis, the Network Inquiry Special Staff made several findings which are at odds with many of the assumptions used by the Commission to justify the financial interest and syndication rules. The staff disagreed with the Commission's conclusions regarding concentration in the program supply market and argued that the market for first-run and off-network syndicated programming is now and was competitively structured at the time the rules were adopted in 1970. The staff also argued that the financial interest and syndication rules might well be disrupting an efficient risk-sharing arrangement between the networks and their program suppliers. Based on its analysis of the network/supplier relationship, the staff concluded that the licensing of various program property rights such financial interests and syndication rights provides a method for producers to share the risk of unsuccessful series with the networks. Networks provided higher program development and production fees to producers when the networks had a share in after-market profits. With the rules in place, network fees to producers were reduced, thus forcing the producer to shoulder a greater financial risk initially. The staff observed that this might in fact lead to more concentration in the program production industry as small independent producers unable to absorb the greater risks are forced to merge with larger, more financially sound, producers.[7]

22. The Commission has never expressly endorsed or rejected the conclusions or recommendations of the Network Inquiry Special Staff. However, having noted the staff's conclusions that the rules were not necessary when adopted and could not possibly deter the practices they were designed to reach, we instituted the present rule making proceeding in June 1982, in order to evaluate the special staff's conclusions. Of equal import, we asked whether changes in market conditions over the past decade may have obviated the need for the financial interest and syndication rules. In this regard we noted:

> Our professed goals of protecting licensees from the exercise of anticompetitive network practices and fostering a healthy independent production industry were established during a period when the gateway to presentation of television programming virtually required use of over-the-air facilities. The Commission became concerned when the acquisition of programming became centralized in the hands of only the three major television networks. However, the market for television programming has undergone significant change since adoption of the syndication and financial interest rule. Over the past few years, the rate of technological change in television program service has increased in a fashion which could not have been anticipated by us a decade ago. In addition the pace appears to be increasing with no peak in sight. Therefore, our concern over the abilities of the networks to act as monpsonists in the purchase of television programming may no longer be justified. *Notice* at para. 32.

23. Moreover, the *Notice* asked whether the rules are appropriate mechanisms to accomplish their stated goals. We solicited comments on whether producers, who are themselves powerful actors in today's program marketplace are in need of protection from the exercise of undue influence by the networks. More fundamentally, we questioned whether protection of program producers from undue influence is an appropriate subject for Commission concern. In situations where the program producer is not so large or influential, we asked whether the rules created any reasonable balance in the bargaining positions of the parties. In more general terms, we also asked parties to provide their insights into the network/program producer relationship and how the rules affect that relationship. Next, we noted that, because other media were not restricted by the financial interest and syndication rules in their dealings with producers, those entities may have a competitive advantage over the networks in their dealing with program producers. We also requested that commenters address the issue of how deletion of the rules might affect independent television stations, since networks acting as syndicators of off-network programming would be in the position of selling that programming to their direct competitors. Finally, we sought comments on the relationship between the financial interest and syndication rules and the network consent decrees.

[7] For a detailed report of the special staff's findings, see "An Analysis of Television Program Production, Acquisition and Distribution," at page 293 of Volume II of Network Inquiry Staff Report.

II. Comment Summary

24. This section contains a summary of the major facts and arguments contained in the comments. It is not intended to set forth every idea or notion conveyed in the comments, although every formal and informal comment was considered fully. The comment summary is devided into seven segments, each dealing with a separate aspect of the rules: (1) The effect of the rules on the production industry; (2) The effect of the rules on television broadcast stations; (3) Effects on advertising costs; (4) The effect of the rules on the networks; (5) The effect on new television networks; (6) Alternative regulatory proposals; and (7) Additional issues. Within each grouping, the arguments favoring repeal are presented first.

25. Before beginning this summary, it may be helpful to generally describe the traditional broadcast video industry in terms of its program sources. The industry is divided into two broad classes of stations: Network affiliates and independents. Network affiliates are those stations that have a contractual relationship with one of the three national television networks (ABC, NBC and CBS) and serve as the local distributors of the programming obtained by the networks from their original producers. Currently, network provided programming makes up about 70% of the average affiliate's broadcast day, and virtually 100% of prime time (8–11 p.m. ET, Monday–Saturday and 7–11 p.m. ET, Sunday). While stations may preempt the network programming in favor of their own, this is rarely done. For example, the average ABC affiliate

clears close to 99% of the network's shows, regardless of day-part. During those day-parts when the networks are not feeding programming to their affiliates, typically 7½ hours a day, the stations must either originate their own shows or purchase programs directly from program suppliers (syndicators).

26. Independent television stations broadcast programming that is either locally originated or obtained directly from program suppliers. The vast majority of independents today (116 out of 179) air general programming consisting of news, sports, movies, programs previously shown on the networks (called off-network syndicated series), and first-run programming specifically created for the syndication market. Forty-two independent stations are "specialty stations" which broadcast foreign language or religious programming aimed at a small segment of the audience. Another 21 independents are subscription television (STV) operations, at least part of whose programming is only available via subscription.

27. Prime time entertainment series programming accounts for 23% of the network schedule, 50% of its advertising revenues and 30% of its profits. It is also the major source of off-network syndicated programming. Following the network run (generally two showings of each episode), these programs may become the product available for purchase by individual stations in the syndication market. The amount of this off-network programming used by independent stations varies. Estimates range from 22% of their programming time for Turner Broadcasting, 30–35% for Taft Broadcasting and 59% for Metromedia. Off-network syndicated series are the principal type of programming aired by independents during the 4–8 p.m. ET day-part, which is considered independents' peak time. During this time, the independent station is programming opposite news and non-network programming on network affiliated stations. According to one commenter, this time period may account for as much as 60% of an independent's revenues, although the average is approximately 50%.

Effects of the Rules on the Production Industry

28. *Arguments for Repeal.* Proponents of repeal argue that the rules were unnecessary to equalize the bargaining power of networks and producers. Although, the Commission believed that the networks had monopsony power, the Network Inquiry Special Staff (NISS) found that the program supply market was in fact competitive prior to the rules' adoption. However, CBS presents data indicating that before the rules were adopted, networks acquired financial interests and syndication rights on a fully competitive basis. An empirical study conducted by Robert Crandall concludes that payments for such rights were made in the form of higher license fees, and the payments approximated the full market value of the rights. The National Telecommuncations Information Agency (NTIA) asserts that there is no historical evidence (i.e., pre-1970) that the networks took advantage of their market position.

29. NBC and ABC state that even if networks had monopsony power when the rules were promulgated, the changed marketplace has rendered the rules obsolete. Studies are submitted by CBS showing that the share of the three networks in total program expenditures dropped from 74% to almost 54% in the past decade. NBC further states that the rules clearly decrease competition in the program supply market by making small producers dependent on major Hollywood studios, their competitors, for needed financing. CBS presents data indicating the number of producers supplying prime time entertainment programming to the networks has fallen from 60 to 41 between 1969 and 1981. Further, the CBS data show that the market share for the major suppliers has increased and caused the disappearance of many small producers. The National Black Media Coalition believes the rules have led to a dwindling number of program suppliers who dislike competition and exclude minority independent producers. The ABC affiliates association suggests that, to the extent competition and program diversity exist, the prime time access rule, and not the financial interest and syndication rules, is responsible.

30. The networks contend that the rules have no relation to bargaining power. Financial interests in programming and syndication rights are merely financial terms over which the parties must bargain. Program selection does not turn on the resolution of one particular financial term. Renegotiation becomes almost continuous after the first season's exhibition. Thus, suppliers are not bound to terms negotiated at the early development stages of production, and once a show becomes a hit, producers are in a much better bargaining position. Also, the networks insist that they make programming decisions on the basis of program quality and audience appeal rather than whether they have a financial interest in the program. ABC presents a study which determines that over the past decade network program costs have risen faster than network advertising revenues. This increase in cost cannot be explained by a corresponding increase in producer input costs. ABC states that an important characteristic of the monopsonist is the ability to control its costs—the ability to extract economic rents from its suppliers. The networks obviously have not been able to do this. Thus, program producers have substantial bargaining power.

31. The Department of Justice states that any market power the networks have derives from the market structure. Regulation of one element in the bargaining process will simply cause the networks to shift their focus to other parts of the bargaining process. The networks also allege that the rules make program supply less efficient. They argue that the sale of syndication rights by program producers is an efficient risk sharing arrangement. Prohibiting this risk sharing raises the cost of programming, reduces total investment in program production, and may reduce diversity by encouraging excessive production of "tried and true" program types.

32. CBS states that the rules force suppliers who wish to sell financial interests or syndication rights to operate in a market artificially narrowed by the exclusion of three major purchasers. This results in reduced efficiency, competition, and diversity in the supply of network programming. The networks argue that they are particularly well suited to bear risk for three reasons: they each finance a large number of programs; since they also schedule their programs, they can take account of inter-program externalities (audience spillover, etc.); and, they can promote programs efficiently over time by coordinating the network and off-network runs. Thus, the program rights are worth more to the networks than to other parties. The Department of Justice and NTIA agree and argue that repeal of the rule would shift the risks to more efficient risk-bearing entities, that is, the networks. Alfred Kahn asserts that ultimately the public is harmed if private markets are not free to work efficiently.

33. CBS argues that the networks must participate in decisions on program content. The networks' participation in program development is an inseparable part of the networks' role. Networks are participants in the creative process, not merely gatekeepers. NTIA agrees, stating that the networks already have ultimate or final control over the nature of the programs they purchase for broadcast. As a licensee and with a

responsibility to its affiliates, each network properly oversees the content of each program.

34. *Arguments for Retention.* Opponents of repeal contend that this proceeding is premised on faulty analyses by the Network Inquiry Special Staff and a misunderstanding of the entire program production distribution exhibition market. The central argument of those who support retention of the financial interest and syndication rules centers on the proposition that the networks now possess and will maintain substantial market power in the foreseeable future. Taft Broadcasting reminds the Commission that the Department of Justice only three years ago finalized proceedings in which the networks were found to engage in anticompetitive activity. Taft finds no change in the marketplace since then that justifies the current proceeding. Similarly, the Association of Program Distributors (APD) states that there has been no demonstration that the networks or the public have suffered under the rules. APD contends that changing the rules on the basis of abstract economic theory such as that supplied by the NISS, rather than demonstrated injury, is unfair. Cox Communications agrees and states that the network inquiry staff's conclusions were based on a misreading of the FCC's objectives and a disregard of the factual record.

35. The Committee for Prudent Deregulation (CPD), a coalition of producers, syndicators, independent television stations, artists and others, states that repeal of the rules would limit diversity of programming sources by weakening or eliminating television program producers. CPD supports the Commission's original determination that the networks used their oligopsonistic positions to extract valuable concessions from program producers including profit shares and syndication rights. The Caucus for Producers, Writers and Directors (The Caucus) indicates that prior to the rules the networks had a financial interest in 93 percent of all exhibited programs and syndication rights in all popular shows. CPD states that there are more independent producers now than before the rules, and, as a result, the program supply market is healthier and more competitive. Prior to the rules the networks paid producers enough to remain in business but it was not necessarily an amount sufficient to allow producers to remain fully independent. According to Embassy Communications and Tandem Productions, the rules have achieved success in making the production industry more vital and independent as well as competitive. The Motion Picture Association of America (MPAA) states that there would be no risk of concentration in the production industry if the rules were retained. MPAA contends that few barriers currently exist to entry in the production industry, but that there would be few incentives to enter the business if the networks took control.

36. The opponents of repeal state that the producer is most vulnerable at the program development stage of production where the networks' leverage is the greatest. According to The Caucus, networks consistently force producers to violate their contracts with the craft unions with respect to creative control over a program. Moreover, the license fee provided by the networks is almost never enough to cover the production cost of the program. MCA maintains that existing network payments do not reflect true value but are the lowest payment level at which producers will produce. For the most part, producers must realize any profits from a program through syndication sales which often occur several years after production.

37. If the rules are repealed, the commenters argue that the networks will use their monopsony power against producers. Supporters of the existing rules argue that the networks provide the sole market for first-run series, and the three networks act as one when purchasing programs. Thus, the networks can pay low prices and force producers to cede valuable rights as the *quid pro quo* of every network license. This will reduce the profitability of program production, and limit access to the business.

38. Several commenters admit there may be some economies due to more efficient risk sharing and the elimination of transactions costs, but suggest that those savings are likely to be relatively small. They note that no party has provided any empirical evidence whatsoever on the size of the presumed economies. The commenters also argue that advance financing by the network is not necessary. A commitment by a network to exhibit a proposed show is a "bankable item" that is itself sufficient to allow a producer to obtain conventional financing. CPD states that the risk-sharing inefficiency created by the rule may not be significant where producers have other means of sharing the risks of production. CPD states that the major studios and large independent producers can engage in risk-pooling. For instance, the NISS Report points out that where the probability of financial loss is assumed to be 50 percent on a single program, it falls to approximately three percent if five statistically independent programs are pooled. Independent producers can pool risk through joint ventures. ICF Incorporated, in a report commissioned by CPD, states that the number of producers of prime time programs declined from the mid-1960's until 1974/75 and increased thereafter. Similarly, concentration measured either by Herfindahl indices or the leading firms' combined market shares generally increased until 1974/75 and declined thereafter. Thus, since there is no strong evidence that risk-aversion by program suppliers exists, it is doubtful that the rules have much effect on risk-sharing efficiency.

39. In response to arguments that the rules merely shift income among major producers on one hand and the three networks on the other, The Caucus insists that this is not a battle of corporate giants. Rather, repeal would have serious effects on small, independent producers and distributors, which, in turn, would adversely affect the public interest in diversity. According to the National Association of Independent Television Producers and Distributors (NAITPD), the rules do not effectuate merely a reallocation of rents. Instead, the major achievement of the rules has been the creation of a new class of producers and distributors who are the primary sources of first-run syndicated material and who represent the only competition to the major studios in off-network syndication programming and financing new productions. These new companies account for approximately one half of the top twenty prime time entertainment series, and, according to NAITPD, are dependent on the financial interest and syndication rules for survival. From the buyer's standpoint, the National Institute for Low Power Television sees significant differences between dealing with producers on the one hand and the networks on the other. In negotiating with producers, price is the major issue; with the networks, certain anticompetitive considerations are always present.

40. With respect to the rules' effects on the creative process, members of The Caucus aver that repeal would strengthen network influence. They contend that program quality decreases as network influence increases, and this record of interference will not improve if the networks get even more power. The role of the networks is to make a profit; the role of the producer is to make a profit plus deliver a message. Repeal of

the rules will eliminate both roles for the independent producer. Lorimar contends that a producer's ability to create diverse and original programming is largely a direct result of the Financial interest and syndication rules. The National Association of Black Owned Broadcasters agrees and states that repeal would grant inordinate control to the networks and decrease any chance for the development of specific programs that appeal to minority audiences. CPD states that in the past the networks have engaged in imitative programming and scheduling, and that repeal will result in more common denominator shows with tried and true formulas. This, in turn, will force producers to turn to other media.

41. *Replies.* In reply comments, CBS reiterates its contention that the rules have diminished television program diversity. According to CBS, the rules have led to increased concentration in program supply and have discouraged the production of innovative, risky programming. NBC adds that the ban on network acquisition of profit shares does not promote more suppliers, more diversity, or more creativity. The network further contends that the issue of relative bargaining strength between the parties is irrelevant. The Department of Justice states that the rules do not promote competition or diversity in the program production market. The program production market is already competitive, and the networks themselves, as the three gatekeepers of network programming, determine the diversity of prime time programming.

42. The United Church of Christ, *et al.* (UCC) contends that repeal of the rules based on pure speculation would be disruptive and contrary to the public interest. UCC states that the present competitive program production environment is largely attributable to the success of the rules. The Association of Program Distributors echoes this thought by stating that the rules succeeded in halting the networks' concentration of control of program content thereby retaining and enlarging program markets for new competitors. Paramount adds that the rules do not provide anticompetitive advantages to large production companies. There is substantial competition among suppliers of entertainment programs, and independent producers supply 50% of the prime time viewing hours. APD attests to the fact that the rules encourage program diversity by noting that the mere pendency of the present rulemaking is affecting financing for new product. Syndicators are reluctant to commit funds to new projects with the future of the rules in doubt. On the issue of bargaining power, Paramount states that the networks can and do require major creative and financial concessions. According to Paramount, no producer has the power to resist these demands, which appear in license agreements as nonnegotiable, boilerplate provisions.

43. With respect to the risk-sharing issue, the Department of Justice states that the efficiency losses imposed by the rules are not large. DOJ contends that the major studios may in fact be more efficient risk bearers than the networks due to their ability to engage in "hedging", that is, spreading their risks by placing programs on all three networks. DOJ also points to the fact that shows selected for a network run readily attract capital as further evidence that the rule cause little efficiency losses. Paramount adds that when major product companies join with independent producers, both parties do so willingly through fair bargaining. This would not be the case if the networks were allowed to take financial interests. APD concludes that the risk-sharing problem is the major cost cited to justify repeal, but that all small producers are eager to assume those risks without network involvement. Cox adds that even if the rules create certain inefficiencies, the benefits of the rules—diversity and healthy independent television industry—justify their continued existence.

Effects of the Rules on Television Broadcast Stations

44. *Arguments for Repeal.* Proponents of repeal state that the rules decrease the number of potential syndicators and thereby limit competition in syndication. This, asserts NBC, is harmful not only to stations purchasing syndicated programming, but also to small suppliers lacking distribution arms and to the public. According to NBC, there never were any abuses which required networks to be barred from syndication, and there is no need to do so today because the market is competitively structured. CBS adds that before the rules were adopted the three broadcast networks obtained syndication rights in only a small percentage of the programs broadcast, and its is unlikely that they could again ever achieve that level.

45. In an appendix to the CBS comment, William J. Baumol states that the rules adversely affect television stations affiliated with the networks and firms that purchase advertising time in conjunction with the networks' television broadcasts. Making the networks less efficient suppliers of broadcast material weakens the position of the affiliates, and offers advertisers a less efficient medium. The ABC Affiliates Association expands this line of reasoning by stating that the rules discourage networks from producing creative, high-risk programming. This undermines programming quality and diverts network resources to the production of programming for less encumbered media services. The Association contends that the rules act as an incentive for the networks to by-pass local broadcast affiliates and encourage the migration of high quality programming from free over-the-air television to pay distribution systems. Gateway Communications states that stations were treated more fairly by syndicators before the rules. According to Gateway, small stations are currently shut out by syndicators, who sell almost exclusively to large group operators.

46. Those supporting repeal state that there was no history of affiliate favoritism in the networks' conduct of the syndication business before the rules were in place. They argue that independent stations are the best syndication customers, and that discriminating against independent stations therefore would be bad business judgment. Withholding product from the independent stations would provide slim, if any, benefits; only a fraction of the audience diverted from independent stations would tune to the networks. The networks contend warehousing syndicated programs would be an unsound business practice that might result in civil liability to other profit participants in a program. Also, many syndication contracts call for guaranteed profits; such agreements are clearly inconsistent with warehousing practices. Warehousing is only efficient if the revenues from withholding programs are greater than the syndication revenues, which is unlikely. In fact, NBC claims that buyers have many alternative sources of similar programming, and that the loss of revenues through warehousing would be enormous.

47. Alfred Kahn opines that the networks probably have some incentive to withhold programming from independent stations, or charge them more for it than they otherwise would, because they are in competition for audiences. But the three networks are not a single entity, and they compete intensely for programming. The networks did not gain dominant control over syndication rights before the rules went into effect, but they might attempt to secure control over syndication of the programs they purchas... if the rules were

removed, since the syndication market has grown in importance. According to Kahn, however, the following considerations argue against the expectation that the networks would achieve monopoly power in the offer of programs to independent stations: The networks' failure to acquire syndication rights from large producers; their small share of domestic off-network syndication rights previous to the rule; the availability of substitutes for off-network programs; the fact that exercise of monopoly power would depend upon either collusion or consciously parallel policies; the fact that the syndication market is very valuable and that the interests and abilities of the networks vary greatly; and the evidence that the networks did not tend to give programs to their affiliates rather than to others. Kahn states that it may be time to turn the surveillance of this industry's conduct over entirely to the jurisdiction of the antitrust laws.

48. The Department of Justice states that a network monopolist holding syndication rights might reduce the supply of off-network programs to broadcasters and thus raise broadcast license fees or advertising rates. Consumer harm would result from substitution of less desirable programming. Whether this potential abuse warrants regulatory restriction depends on the likelihood that the networks could coordinate their actions and whether a rule would reduce competitive problems without causing inefficiencies. DOJ states that the networks may be able to collude since the industry is highly concentrated, barriers to entry are high, and cheating would be easy to detect. The data relied on in 1970 may not predict network behavior today, since the value of syndicated programs was smaller, the growth of independent stations may have changed the networks' incentives, and syndicated programming may not have constituted a separate market. New video distribution technology may not reduce the market power of the networks. The Department states that the rules cause efficiency losses and should be eliminated, but that the Commission should consider adopting a narrow rule designed to address the potential harm to the off-network syndication market if this can be done without reducing efficiency in program production and distribution. DOJ concludes that the antitrust laws should not be relied upon to ensure against anticompetitive network practices.

49. *Arguments for Retention.* Parties favoring retention of the financial interest and syndication rules aver that, because of the rules, the market for the purchase of off-network programs is competitive. Metromedia states that there can be no public interest justification for allowing the networks to gobble up the syndication/independent station sector of the television industry. It would be contrary to the public interest to take any action that would reduce the number of sellers in the off-network syndication market, particularly when the only remaining sellers would be three dominant networks with a history of conscious parallelism. Turner Broadcasting submits that if the rules are repealed, the networks will have the power to dominate the syndication business. They have bottleneck control of the initial years of a series' broadcast; they can rely on owned and operated stations (O&Os) as buyers of last resort; they can amortize program costs across a guaranteed audience; they have the power to raise their national advertising rates as necessary; and they can spread costs over their vast broadcast empire. Viacom International adds that if the rules were repealed, network O&O stations would purchase their syndicated programming from the network. Independent producers and syndicators would be severely disadvantaged if they were unable to syndicate their programs to the network O&Os.

50. The Committee for Prudent Deregulation asserts that repeal of the rules would be detrimental to independent television stations because it would place control of a vital source of their programming in the hands of their dominant competitors. Programming is the most important element in the success of any television station. Independent stations are the most significant source of competition to the major networks and their affiliates. The Association of Independent Television Stations (INTV) states that the growth of independent stations is due in part to access to recent off-network syndicated programs, and continued access to such programming is essential to permit further development. Metromedia presents figures showing that off-network programming comprises 51 to 78 percent of its stations' broadcast schedules.

51. INTV argues that the networks have a strong incentive to withhold programming that may attract audience to their competitors. If the Commission repeals the rules it will fortify the networks' supremacy over emerging services, and will retard the development of independent stations. The networks could favor their owned and affiliated outlets in a variety of undetectable ways, and they have more incentive to use their power today than in 1970. If the networks withheld or delayed syndication of the most popular network series, independent station schedules would be weakened and the quantity and quality of free program choices would be reduced. The independent stations would also lose their principal source of revenue and the financial ability to acquire high-quality first-run material. The prospects for the creation of a fourth network would disappear. The National Council of Churches/United Church of Christ posit that the rules have important noneconomic objectives. They eliminate conflicts of interest in network scheduling and syndication sales to competitors. Repeal of the rules would result in less desirable program choices for the public, less credible competition for the networks, higher advertising prices, and higher consumer prices.

52. ICF Incorporated posits four scenarios in which the networks might maximize revenues and weaken independent stations, assuming that unshown but available programs restrain the prices of more popular ones. In the first model all off-network programs are controlled by a single firm, and the sole supplier could make unshown programs unavailable so they could ensure that they would no longer limit the prices charged for the more popular programs. Station program choices would not change but program prices would increase. In the second model, programs are supplied by a dominant firm and a competitive fringe. If the program that constrains prices is owned by one of the small suppliers, then the dominant firm might increase its profits by removing from syndication programming that would otherwise be shown. The program owned by a fringe would then replace the deleted program and another program would become the best unshown program. If there is a significant difference between the value of the two programs, then prices of all programs that are sold can be raised significantly. The dominant firm loses the revenue from the program it withdraws, but gains additional revenue on each program it continues to sell.

53. In the third model, the supplier is integrated into broadcasting and earns revenues from television advertising. Under some conditions, increases in the firm's advertising rates will increase the prices at which it can sell off-network programs. In the fourth model, the integrated supplier raises off-network program prices higher than would a non-integrated firm. Independent stations

would be unable to earn a profit by showing the same set of programs, so they will offer programming that attracts fewer viewers, reduce broadcast hours, or cease operation altogether. Advertising prices would rise, and the revenues lost from selling fewer programs would be offset by higher advertising revenues. An integrated supplier is more likely than an unintegrated one to reduce the hours of programming independents offer because its affiliated stations gain viewers and can charge higher advertising rates. Television viewers will have fewer viewing options; advertisers would pay higher rates; and consumers would pay more for advertised products.

54. ICF examines the conditions underlying these models and provides evidence on several points: recent off-network program prices will not be constrained by other types of programming if the rules are repealed. The value of the stock of older programs will rapidly decrease over time, and first-run syndication and theatrical movies are imperfect substitutes for off-network programs. Independent behavior by the networks could lead to a restriction of off-network program availability, and coordinated behavior is likely. The networks have stronger incentives and more ability than other owners of off-network programs to restrict supply, and they could achieve substantial gains from acquiring market power in off-network programming. Networks did not attempt to seize market power prior to adoption of the rules because: the independent stations were unprofitable; they had a smaller share of viewers and advertising revenues; and the networks were under intense scrutiny. A significant risk exists that repeal of the rules would lead to elevation of off-network program prices, and the magnitude of the effects could run in the hundreds of millions of dollars per annum.

55. Opponents of repeal also insist that warehousing is a very real concern. INTV quotes network statements indicating that repeal of the rules will retard the "premature" syndication of hit shows. INTV interprets these remarks as an intent to delay the availability of programs that still have significant network run appeal. Metromedia, noting the importance of made for television movies, believes that networks would warehouse such movies for repeated network exhibition and would never syndicate such features.

56. *Replies.* In reply comments ABC notes that the top 15 syndicators control 75.6% of the syndication market. ABC avers that the addition of the networks as domestic syndicators would contribute to the competitiveness of the syndication business. The ABC Television Affiliates Association suggests that independent station support for the rules takes the short view. Rather a reduction in the production of high-quality network programming will ultimately affect independent stations due to their heavy reliance on off-network fare. Several commenters reject the notion that the growth of the independent stations is somehow related to the financial interest and syndication rules. NBC, for example, states that the growth of the independent stations relates primarily to the general upturn in the economy beginning in 1976, the reduction in the UHF handicap, and the lessening of advertiser bias against independent stations.

57. Much of the reply comments were devoted to the issue of warehousing, which several parties contend is the sole issue seriously in contention. The proponents of repeal attack the warehousing scenario by asserting that none of the conditions necessary for warehousing to work would be satisfied. First, the networks would not acquire a dominant share of syndication rights. In this regard, NBC submits a study showing that if the networks began acquiring syndication rights at the same rate as they did before the rules, the networks would have a combined 14% share of the off-network universe in ten years and a 20% share by the year 2000. Second, the networks and their supporters contest the assumption that recent off-network entertainment series constitute a relevant economic market. NTIA states that various first-run programs, older off-network series, and children's programming show the same ratings success as many new off-network series. NBC adds that if marginal syndicated product is withheld, many fungible substitutes are available. Third, the networks state that collusion is not possible. Fourth, according to CBS, the networks have no incentive to monopolize off-network programming to harm independent stations and raise advertising prices. The heaviest use of off-network programming by independent stations is during the 4–8 p.m. period. Because this is a little-used period for network programming, the networks have no incentive to weaken independent stations during this day-part. The ABC Television Affiliate Association states that warehousing will not occur because it would hurt affiliates outside the top 50 markets who use off-network programming during the access period (generally 7–8 p.m. E.T.).

58. NAITPD states that the television industry will be harmed if networks are allowed to enter the syndication market because the small distributor will be forced out of business. This will adversely affect price competition and will leave the networks and major production houses free to set prices. The Association of Program Distributors avers that the networks could use their power to control the syndication market by obtaining syndication rights to off-network programs and attracting first-run syndication programming by offering financing and guaranteed clearances through the O&O's and affiliates. Independent distributors could not compete with such power and would eventually be forced out of business.

59. Westinghouse states that the syndication rule is needed more now than when adopted. Deletion of the rule would adversely affect affiliates that preempt network feeds with other sources of programs. Westinghouse asserts that the networks' access to off-network product, their unique delivery systems, and their affiliate systems would quickly threaten the competitive syndication market. Permitting networks to syndicate would also allow them indirectly to circumvent the prime time access rule; networks could program the access period with first-run syndication programming. Accordingly, Westinghouse views the syndication rule as a necessary corollary to the prime time access rule.

60. On the issue of warehousing, Citizens Communications Center (CCC) contends that warehousing could be profitable when increased audience shares outweigh the loss in syndication revenues. Second, withholding only a small amount of programming would be enough to decrease supply and raise prices. Third, the alleged duty to other profit participants to maximize syndication profits would be irrelevant if the networks owned a 100% interest. Furthermore, litigation by other profit participants would be lengthy and expensive; damages would be speculative and hard to prove. Also, damages may be less than warehousing gains. Finally, CCC states that warehousing does not require collusion but can result from parallel behavior.

61. NAITPD asserts that neither antitrust remedies nor DOJ enforcement can replace the FCC as a guardian of the public interest in broadcasting. Antitrust remedies are largely corrective, whereas FCC policies are intended affirmatively to promote the public interest. Taft and

Paramount both take issue with characterizing the problem as "warehousing." Paramount contends that warehousing is unlikely only because such an extreme measure would be unnecessary to achieve the networks' anticompetitive purpose. Delays in release would be almost as effective and would make FCC oversight or antitrust enforcement virtually impossible. Taft concludes that the issue is not warehousing but control of the market.

62. In its reply comments, the Department of Justice reiterates its view that the only issue of concern in this rule making involves the effects of repeal on the syndication market. DOJ argues that the networks could control the syndication rights to enough programs to make withholding a profitable strategy, although network coordination of withholding would be difficult. DOJ also states that networks have the incentive to warehouse, and that the antitrust laws may not be effective enforcement devices. DOJ concludes that a limited syndication rule is advisable to minimize the potential adverse effects of the rules' repeal.*

*Effects of the Rules on Advertising Costs**

63. The parties supporting retention of the rules assert that, if the rules are repealed, the advertisers and consumers of advertised products would suffer due to increased advertising rates. The Association of National Advertisers believes that recision of the rule is clearly premature. Deleting the rules at this time would create a significant risk of further concentrating the television ad market when more competition is beginning to emerge. According to the commenters' analysis, advertising "inventory" value is determined by the audience that is garnered by a station for a particular program. CPD claims that the financial interest and syndication rules ensure programming availability to independent stations. These stations, therefore, have an advertising inventory that increases competition for the advertising dollar and holds advertising costs down. Both CPD and the Association of National Advertisers supply data purporting to show that the cost of advertising per 1,000 viewers is 20–60% lower in markets with strong independent stations.

64. If the rules are repealed, however, networks will have the ability to restrict supply of recent programming, thereby decreasing the strength of independent stations. This decrease in independent station audience shares and the concomitant increase in network shares would allow the network affiliates to raise advertising rates. CPD states that the networks could also raise advertising rates by reducing the amount of advertising time available. Without strong independent stations to absorb advertiser demand, the networks and their affiliates alone will reap the benefits of higher advertising rates. If, on the other hand, independent stations can absorb advertiser demand and thus obtain increased revenues, the networks would be able to recapture a portion of those revenues by raising the prices of off-network programming. Polygram's Norman Horowitz addes that if networks actively engage in syndication, they would probably offer many series on a "barter" basis. This would enlarge network control of availabilities and give the networks further power to influence rates.

65. Finally, according to those parties addressing this issue, in the field of advertising there is really no comparable substitute for television exposure. Accordingly, a strong independent television service is the only identifiable entity capable of restraining the network's power to influence advertising rates.

66. In response to the charges that repeal of the rules would adversely affect advertising rates, both CBS and DOJ indicate that there is no evidence that advertisements shown during the 4:00 to 8:00 p.m. time period constitute an economic market. DOJ continues that if advertisers have reasonable substitutes for the 4:00 to 8:00 p.m. exposures, advertising rates cannot be affected by reducing such exposures. Also, because the 4:00 to 8:00 p.m. time period is not heavily programmed by the networks, DOJ suggests that the real benefit of reducing availabilities in that time period would accrue only to the network owned and operated stations.

67. The Federal Trade Commission (FTC) states that the models used to predict harm to ad rates are based on assumptions that the networks will collude: on the purchase of rights to programs; in the distribution of off-network series to the independent stations; and in the determination of advertising rates. The FTC concludes that collusion in these three areas is highly unlikely. The FTC also notes that the ICF and ANA studies attribute changes in advertising cost per thousand (CPM) to a single factor, number of viewers delivered, but that cost also depends upon the demographic composition of the viewers, the expected number of viewers for future showings and the degree of uncertainty associated with each of these measurements. Further, a new study cited by the FTC suggests that neither lower market share for independent stations nor a reduction in the number of independents would enable networks to collude on the price of advertisements. Thus, the FTC concludes that the contention that a reduction in the competitive position of independent stations would permit networks to establish monopsonistic advertising rates is not supported either by empirical evidence or economic analysis. With regard to barter transactions, CBS opines that networks would simply be participating in an existing syndication practice.

68. In support of the position that repeal of the rules will lead to higher advertising prices, General Mills states that competition is the single most important factor in establishing ad prices. The rules provide independent stations a continuous supply of programs that attract viewers and enable stations to compete for advertising dollars. General Mills presents data comparing network advertising prices, spot market prices, and the Consumer Price Index (CPI). These figures show that the network advertising CPM is significantly higher than the spot market CPM due to less competition. Network power to control ad prices is evidenced by 1983–84 advertising price increases ranging 15–22% higher than last year's prices, which were 13–16% higher than the year before. These increases are significantly higher than the increases in the CPI.

Effects of the Rules on Television Networks

69. *Arguments for Repeal.* The networks claim that their composite net audience share currently is declining and that projections indicate that net share will decline an additional 10–20 points by 1990. Between 1985 and 1990, program expenditures by cable television and subscription services will exceed the combined network programming expenditure. Thus, the new delivery systems are expanding and enhancing the opportunities for program suppliers. Given this situation, the networks and their affiliates argue it is fundamentally unfair to put them at a uniquely disadvantaged competitive position vis-a-vis emerging video technologies. They argue that repeal of

*DOJ's proposed syndication rule as well as other compromise solutions offered by the commenters, is summarized in a later section of this document.

*This issue was first raised by the opponents of repeal in the initial comments. Therefore, the positions of those favoring repeal were presented in the replies.

the rules is of critical importance so the networks will be able to compete with the ever-burgeoning new purchasers of programming. Many of these new purchasers are pay services that can outbid the networks for programming that would otherwise be shown on "free" TV. The American Legal Foundation contends that this situation eliminates programming options available to viewers unable to afford pay television. The NBC Affiliates indicate that repeal would contribute to the restoration of economic balance between the networks and the pay television industry. This is important in order to encourage the continuation of free TV, which serves the public interest by providing diversity, competition to pay services, public affairs programming, and greater opportunities for minority actors and producers.

70. NBC asserts that the rules discourage network production of high quality shows because they cannot achieve the program's full value due to their inability to engage in syndication. Television syndication is as important in amortizing programming developed initially for the new technologies as first-run network programs. Along the same lines, NTIA states that the networks need to be able to share non-network revenues generated through exploitation of subsidary rights in order to pay the high prices prime time programming demands. Shooshan and Jackson contend that the rules make the weakest network more averse to taking a risk on innovative or different programming, because it cannot reap the benefits of a successful gamble through syndication. The NBC Affiliates Association claims that this negative aspect of the rules, could filter down to affiliates and affect their economic health, especially in the network compensation area.

71. *Arguments for Retention.* The opponents of repeal see no imminent threat to network dominance. They quote network executives' speeches indicating that the networks will dominate the industry well into the 1990's. The Inter-Guild Council points out that even though network shares are predicted to decrease, the total network audience will increase due to growth in the number of television households. Golden West posits that the networks are enjoying unprecedented prosperity: The control over affiliate time is growing and there have been significant increases in network profits.

72. The opponents state that new technologies are not sufficiently powerful as yet to minimize the networks' oligopsonistic position.[18] Lorimar states that the networks are the only entities capable of high penetration and nationwide distribution, and the new media offer no adequate alternative to network coverage. Cox asserts that cable television penetration is currently around 35% of television households and is expected to increase to 40–60% by 1990, by audience shares for pay cable are expected to be only 9% by 1990. Cox contrasts these figures to the networks and their affiliates which reach virtually every television household. According to NAITPD, the new technologies have provided mostly advances in hardware rather than competitive video software. The network loss in shares has been primarily to the independent television stations, not to new technologies. With respect to the advertising perspective, the ANA states that competition from the alternative media is more illusory than real. Recent figures show that ad-supported cable obtained a 3% share of the television advertising market and 1.7% of total television ad revenues. ANA points to the recent failure of ad-supported cable networks and states that the future of such offerings is most uncertain.

73. Both MCA and the Association of Program Distributors point out the new technologies are not a dominant force in the acquisition of entertainment series programming. According to the APD, the new media are not competing for network-type entertainment programming, but they are outbidding the networks for theartrical movies and sporting events. Since such programs have no significant syndication value, the financial interest and syndication rules are essentially irrelevant. Thus the argument that free television is being harmed somehow by the rules is misleading and erroneous.

74. Parties in favor of retaining the rules indicate that the rules have not crippled the networks but are sound structural devices to restrain the overriding power of the networks. Cox states that network participation in the new technologies is in no way restricted by the financial interest and syndication rules, which only apply to broadcast rights. In fact, the networks are participating fully in new technologies. The FCC is already facilitating this process by proposing elimination of the cable/network cross ownership rules, granting waivers, and allowing networks to seek licenses in new areas such as DBS. INTV suggests that the networks are currently reinvesting their profits in new technologies instead of public interest broadcast services. The Association of Program Distributors concludes that the primary benefit of rescinding the rules would be to eliminate the largely conjectural disadvantages suffered by the three most highly favored licensees in 50 years of Commission history.

75. *Replies.* In its reply comments, Shooshan and Jackson aver that the rules are written so broadly that they create a series of unintended and unnecessary harms which deny viewing options to the American public. They recommend at the very least that networks be permitted to engage in the following activities: syndication of first-run programming; syndication of off-network programming carried initially on other networks; foreign snydication; syndication of non-series and special interest programming; and syndication of older off-network programming. The network O&O's should also be permitted to syndicate.

76. The reply comments from those parties supporting retention of the rules focus on the allegations that the rules place the networks at a competitive disadvantage. NAITPD alleges that it is also unfair that no other entities can engage in television networking to the extent of the existing three commercial networks. Citizens Communications Center states that the rules do not threaten the financial viability of the networks and, by inference, free television. Syndication rights are investment decisions, not financial panaceas. CCC points out that the networks have alternative investment opportunities available to them, and that they are in fact actively investing in the new technologies.

77. The Department of Justice again takes the position that the new technologies alone do not justify repeal of the rule at present. According to DOJ, it is unclear how much new product produced for the new media will be good substitutes for off-network programming. Further, the ability of pay services to compete for sports, movies and specials is irrelevant to this proceeding; such programs are not generally suitable for syndication in the 4–8 p.m. time period. DOJ asserts that the disadvantages cited by the networks with respect to bidding for sports and movies are the result of differences between pay and ad-supported television, not the rules. DOJ concludes

[18] The Department of Justice states that networks may continue to be the primary source of syndicatable programming because the attractiveness of programming produced by the new distribution services is as yet undermined. DOJ also cites the CBS study that predicts network dominance through 1990. Thus, DOJ contends that it is unclear whether new technologies will reduce substantially network market power.

that the networks are not competitively disadvantaged by virtue of the financial interest and syndication rules.

Effects of Rules on New Television Networks

78. Shooshan and Jackson suggest the rules have the unexpected effect of restricting potentially desirable "hybrid" ventures. These hybrid networks could take the form of several broadcast stations and a cable network. Such problems could not have been foreseen when the rules were initiated, but potential networks must consider the rules and plan around the regulatory constraints.

79. Taft Broadcasting states that the rules allow entities as small as Taft to begin to compete with the networks; however, the oligopsony force of the networks has restricted Taft's potential program production and distribution of its own programming. In support, the Bolter Study states that the three dominant networks could outbid any energing network for the best programming thereby ensuring the demise or surely hampering the growth of nascent networks. Therefore, the rules should be retained for the major networks but not for others because they do not have the economic power wielded by the big three.

Alternative Regulatory Proposals

80. In the initial comments, during the oral presentations, and in the reply comments several parties suggested various compromises whereby the rules would neither be completely retained nor completely deleted. The major compromise proposals and the comments engendered by them are described below.

81. *Forced sale of syndication interests in prime time series programs.* Under this option, which would apply only to the three major commercial networks, no restrictions would be placed on a network's ability to acquire and hold financial interests in programs shown over the network. Networks would also be allowed to acquire syndication rights to any program and would be permitted to syndicate those programs during the network run. However, the networks would be required to divest themselves of the syndication rights to a program in a one-time sale without legal restrictions to a third party no later than a fixed time after the end of the network run. The period between cancellation of the network run and the forced sale would be no longer than necessary to enable the network to sell the syndication rights efficiently. By its terms, this forced sale would apply only to domestic television broadcast distribution rights of prime time entertainment series for non-network exhibition. The rule would not apply to off-network programs from any other day-parts, to network-product first-run syndicated programming, or to made-for-TV movies.

82. DOJ explains that the networks would be unable to warehouse programs following the network run, but any risk-sharing inefficiencies created by the present rule would be eliminated. The rule would permit the networks to capture any increase in program values created by network efforts and would give the networks incentives to invest in and promote programs nearer to their optimal levels. Finally, the rule would be self-executing. Any attempt by the networks to control any term of domestic program distribution after the network run would violate the rule.

83. Commenters note that the forced sale option increases transaction costs since it would force the networks to undertake negotiations to sell program rights that might not be undertaken in the absence of the rule. DOJ responds that these costs would not be large, because the syndication market is preexisting and competitive, and this type of sale occurs continuously today. Commenters also contend that the sale might incur certain costs because the networks might be more efficient syndicators than those to whom the rights could be sold. DOJ contends that these losses would be small because there is no reason to believe that the networks would be more efficient syndicators than the firms now in the business. The FTC, however, submits that these efficiency costs may not be small.

84. ICF states that the networks could use the forced sale to their advantage by bundling the sale of programs to a few select syndicators. Together with the networks, these few syndicators could behave anticompetitively. DOJ responds that the networks have no incentive to create an oligopoly in syndication rights because this oligopoly could turn against the networks. ICF also contends that the forced sale would have to be closely supervised by DOJ and the FCC if it is to work properly. Further, the time period set for the forced sale would be crucial: if it is too short it represents little change from the existing rule; if it is too long it provides inadequate protection from warehousing. The forced sale could also create inefficiencies in network decision-making. For example, if the networks have to divest themselves of syndication rights after the network run, the networks might not be able to enter into multi-year syndication contracts during the first run. Finally, ICF concludes that the networks should also be forced to sell their financial interests in order to prevent anticompetitive behavior. DOJ contends that the networks could not act anticompetitively in this area without detection. Further, because there is no ready market for the transfer of financial interest, transaction costs might be substantial.

85. *Limited partnership type interests.* Westinghouse points out that the financial interest rule affects networks' dealings with producers while the syndication rule affects the network-station relationship and stations' abilities to make independent programming judgments. The Network Inquiry Report did not address the rules' effects on local stations; therefore, the NISS report may be a basis for reviewing the financial interest rule, but not the syndication rule. Based on this analysis, Westinghouse offers a compromise rule which would allow networks to obtain a passive (non-controlling) or limited partnership financial interest in network programming. However, networks would not be permitted to have any control over syndication. In setting a limit on the amount of financial interest that a network could acquire, the following guidelines are offered: The extent of network participation must not constitute presumptive or *de facto* control; and, the syndicator must have a sufficient economic incentive to participate aggressively as an independent force.

86. Westinghouse states that this rule would reduce the risk-sharing inefficiency of the existing rule and allow networks to earn a return for the risks they incur in program development and production. Also, the bar against network syndication prevents warehousing and insulates the networks from any so-called "conflict of interest" situations. The rule is also workable from the FCC's standpoint, and it focuses the Commission's responsiblities on protecting the public's interest in receiving television service from diverse, independent sources.

87. Other commenting parties express some reservation about the Westinghouse proposal. Some commenters suggest that "control" should be defined in terms of a percentage limitation on the network's allowable financial interest. Capital Cities suggests that the networks safely could have between a 20 percent to 40 percent ownership interest without obtaining control, but further comment should be solicited on this issue. The

FTC opines that effectively precluding control may not be so easy and will require "artful" drafting. DOJ asserts that limiting a network's financial interest would prevent the networks from taking advantage of vertical efficiencies. Further, enforcement costs would be high in reviewing the multiplicity of ownership interests that might develop.

88. Some commenters oppose this approach entirely. The Association of National Advertisers states that a compromise anti-warehousing rule would not be adequate. ANA believes that some anticompetitive activities could be accomplished if the networks acquired any level of financial interest. Network influence over the distributors might still be substantial and virtually undetectable. Taft asserts that networks would have access to syndication records which might give them information about competing stations' schedules. This would provide the networks with a substantial program planning advantage. The networks would also know what competitors paid for programming. This would permit network O&O's to undercut other stations's advertising rates. Taft concludes that allowing networks to obtain a profit share would lead to network pressure on when and how a particular program could be syndicated.

89. *Graduated Ownership Proposal.* During the oral presentation, Commissioner Quello distributed copies of a compromise rule and sought comments on the proposal.The proposal would permit the networks to acquire a significant but variable percentage of financial interests in network programs. The percentage of interests that could be acquired would be tied to the combined audience ratings of the three networks. As audience ratings declined, indicating less network market power, the percentage of interest that the networks could acquire would increase.

90. ICF contends that conceptually this proposal is the best compromise solution because it allows the networks in, but slowly, as market conditions evolve. This option deals with only the financial interest portion of the rules. Because the syndication rule would be left intact, concerns over warehousing and conflicts of interest in off-network program distribution would be satisfied. ICF also suggests, however, that networks are likely to influence syndication if they have *any* financial interest in a program. This could lead to warehousing problems. DOJ states that it would be appropriate to link entry of the networks into this market with a decline in their market power. DOJ contends, however, that changes in network market share or network audience rating will not accurately predict changes in network market power with respect to warehousing. Network market share may be irrelevant to syndicated off-network programming if the changes in market share are based on viewing shifts to movies, sports, or specials. Both DOJ and ICF suggest that such a rule would entail high enforcement costs in drafting a workable formula and then measuring and applying it. Taft states that this option is overly complex. ICF recommends that, if this proposal is adopted, the Commission should set a specific level and periodically review its adequacy rather than try to devise a sliding scale. ABC concludes that this option still hinders efficient risk sharing and that no valid reasons have been advanced to interfere with the bargaining process between the networks and program producers.

91. *"Use or lose" proposal.* Storer suggests that the financial interest rule be dropped entirely and that the syndication rule be replaced with a narrowly drawn rule designed to prevent warehousing. Under this rule, any syndication rights in programs not produced entirely by the networks, must be exercised within a stated term of years or revert back to the owner of the program. Storer asserts that an appropriate date for the "use or lose" decision might be three years from the first network exhibition of the program. The proposal eliminates any inefficiencies inherent in the financial interest rule yet prevents warehousing. Further, the rule would be closely monitored by those entities trying to regain the syndication rights. DOJ and the FTC assert, however, that it would be very difficult for the FCC to determine whether the networks have in fact aggressively attempted to syndicate the programming. Further, treatment of syndication in selected markets and questions of reversions in others would complicate its enforcement.

92. *Percent of programs limit.* Dr. Fisher, an economic consultant to CBS, proposed a compromise version of the rules that would permit networks to own unlimited financial interest and syndication rights in a limited number of programs. Fisher proposes that the networks be allowed to obtain such rights in 60% of programs for all three networks combined or 20% of programs for each network individually. Should these limits be exceeded, the networks would be required to sell the rights to some programs. In order to monitor this rule, the networks would be required to submit periodic reports detailing the rights and interests held by them. Because networks would be able to participate fully in a fixed percentage of programming, the risk-sharing inefficiencies would be reduced. Similarly, the possibility of successfully warehousing programs would be minimized.

93. ICF argues that allowing any concentration of syndication rights in the networks would be unhealthy since it could lead to anticompetitive behavior. DOJ asserts that this option would entail significant enforcement costs. The FCC would have to determine and then enforce the relevant universe of programs to which the limitations apply and the percentage of these programs that the networks could control. DOJ, ICF, and the FTC all note that the networks could circumvent the rules' intent by disposing of rights in shows that turn out to be unattractive in order to buy a greater percentage of rights in new programs.

94. *Dominant/Non-dominant Network Proposal.* According to this proposal, the rules would be retained in their entirety, but would be applied only to those firms having market power. Thus, the rule currently would apply only to CBS, NBC, and ABC. Turner recommends that a test for defining market power should include elements measuring the scope of service and the number, health, and relative size of the companies in network competition. Operationally, at least for the present, this proposal is similar to those offered by several other commenters. For example, although the Spanish International Network takes no position on the merits of the financial interest and syndication rules, it states that if the rules are retained, they should expressly apply only to the three major commercial networks. PBS reminds the Commission that it currently is exempt from the rules and that the Commission in fashioning some alternative formulation of the rule, should not omit that exemption. Although supporting deletion of the rules entirely, Henry Geller and Donna Lampert state that, at the very least, the rules should be revised so as not to include new, emerging networks. Restricting the rule in this way would not hamper the creation of new broadcast or "hybrid" networks but would continue to restrain the dominant big three.

95. Although citing potential harms to emerging networks as an adverse effect of the rules, Shooshan and Jackson contend that Turner's analogy to dominant/non-dominant carriers is inappropriate. According to Shooshan & Jackson, occasional, *ad hoc* networks

provide substantial competition to the major networks. This competition eliminates the bottleneck in program networking. Additionally, Shooshan and Jackson find no substantial barriers to engaging in this type of *ad hoc* networking. They reason that it therefore makes no sense to classify any firm as dominant in an industry where short-term, *ad hoc* competition is a real threat.

96. With respect to all the various compromise proposals offered by the commenters, CPD states that any new formulation must meet several important objectives. First, it must prevent network control over syndication. Second, this must be accomplished without significant enforcement or compliance costs. Third, there must be no significant costs in terms of economic efficiency. And fourth, the rules must be carefully drawn to avoid overbreadth. CPD also urges the Commission to weigh any transition costs inherent in modifying the rules against any benefits that might accrue from the changes. CPD concludes that after a consideration of all these factors, the existing rules remain the most effective and efficient.

Additional Issues

97. On April 21, 1983, the Office of Communication of the United Church of Christ, the Communications Commission of the National Council of the Churches of Christ in the U.S.A., and Paulist Productions filed a Petition for Further Notice of Proposed Rule Making. The parties allege that a Further Notice is necessary because all interested parties have not been afforded equal opportunity to address "vague and nonspecific regulatory alternatives" which "appear to go beyond those contemplated by the Commission in initiating this proceeding." UCC *et al.* accordingly request that a Further Notice be issued to seek comments on proposed options for repeal, modification, or retention of the financial interest and syndication rules and to solicit additional options as well. The petition exhaustively documents various media articles and statements by Commissioners relating to compromise solutions to this proceeding. UCC contends that, by not specifically addressing these compromises and soliciting comment thereon, the Commission is depriving many parties from meaningfully participating. Accordingly, the Commission may be violating the Administrative Procedure Act and its own rules which may lead to "unpleasant litigation at best, and reversal at worst." UCC concludes that such problems, "... and the consequential delay, expense and loss of public confidence can be avoided by the simple expedient of soliciting further comments."

98. In response, NBC argues that the original *Notice* in fact sought comments on appropriate modifications to the financial interest and syndication rules and that the *Notice* was not cast in "all or nothing" terms. NBC then lists a number of commenters who specifically forwarded and analyzed potential compromise positions in their initial comments. NBC further aruges that the APA requires only a notice containing "either the terms of or substance of the proposed rule or a description of the subjects and issues involved." Citing *California Citizens Band Association v. United States*, 375 F. 2d 43, 48 (9th Cir.), *cert. denied*, 389 U.S. 844 (1967). NBC asserts that the APA does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. Hence, NBC concludes that the requirements of the APA have been met in this case and that the issuance of a Further Notice is neither necessary nor desirable.

99. In their reply comments, Henry Geller and Donna Lampert allege that, while the procedures being followed by the Commission are basically fair, the Commission is committing significant procedural error by labeling, for *ex parte* purposes, this proceeding as "non-restricted". Because this rule making, in the commenters' judgments, involves "competing claims to a valuable privilege", the proceeding, under the Commission's rules, must be considered restricted. Geller and Lampert suggest that this violation of the Commission's own rules could be corrected merely by eliminating the present restricted/non-restricted dichotomy in the Commission's rules and by conducting all proceedings under the non-restricted procedures. According to Geller and Lampert, the non-restricted procedures are fair and could be applied to all informal rule makings. However, until the Commission does change its *ex parte* procedures, it is bound by its rules. The present rules state that *ex parte* contacts are not permitted in rule making proceedings involving competing claims to a valuable privilege. Thus, the Commission is not complying with its own rules in this proceeding. The commenters note that, since the *ex parte* provisions are procedural rules, they could be amended immediately without seeking public comment.

III. Discussion

Legal and Policy Context of the Rules

100. This proceeding encompasses important issues relating to competition, diversity and efficiency in the production and distribution of television programming. There does not generally seem to be any disagreement among the parties to this proceeding that these important goals must guide our decision on whether to retain, modify or eliminate the financial interests and syndication rules. What is disputed is how various market practices and regulatory policies further or hinder the achievement of these goals and what weight should be given to each goal in situations where they may be contradictory. A discussion of these legal and policy issues will clarify the criteria used in reaching our tentative decision in this proceeding.

101. As a general matter, the Commission is guided in its decision making by the Communications Act of 1934, as amended. As is well known, the Act mandates that the Commission promote the public interest, convenience and necessity, but it does not define with any degree of precision the meaning of this direction. Rather, the Commission, subject to oversight by the Courts, has been traditionally afforded a considerable measure of discretion to formulate precise standards based on the objectives of the Act. In particularizing the public interest in adopting the financial interest and syndication rules, the Commission relied primarily on concepts of diversity and competition.

102. That the Commission should foster diversity in broadcasting is a concept that flows from the First Amendment and has been recognized in decisions of the Commission dating back to its creation. The Supreme Court has stated that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * * " *Associated Press v. U.S.*, 326 U.S. 1, 20 (1943). Commission decisions of all types have relied heavily on this concept. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965); *Newspaper/Broadcast Cross-Ownership*, 50 FCC 2d 1046 (1975); *Great Lakes Broadcasting Co.* 3 F.R.C. Ann. Rep. 32, 34 (1929), *rev'd. on other grounds*, 37 F. 2d 993 (D.C. Cir. 1930), *cert. denied*, 281 U.S. 706 (1930); *Editorialized by Broadcast Licensees*, 13 FCC 2d 1246 (1949); *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, Gen. Docket No. 82-797, 48 Fed. Reg. 5976 (February 9, 1983).

103. The desire to increase the diversity of programming sources available to the public has been one of

the reasons the Commission has moved aggressively in recent years to eliminate policies and modify rules that limit the possibility of diversity being made available to the public. *See e.g., Cable Television Distant Signal and Syndicated Exclusivity Rules,* 79 FCC 2d 663 (1980) *aff'd sub nom. Malrite T.V. of New York v. FCC,* 652 F. 2d 1140 (2nd Cir. 1981) *cert. denied* 102 S. Ct. 1002 (1982) (eliminating certain restrictions on cable television operations); *Subscription Television Service,* 90 FCC 2d 341 (1982) (increasing availability of broadcast subscription television service); *Direct Broadcast Satellite Service,* 90 FCC 2d 676 (1982) (authorizing operation of direct broadcast satellite stations); *Low Power Television Service,* 51 RR 2d 476 (1982) (authorizing low power television service); *Report and Order in Docket 80-90,* FCC 83-229 (May 26, 1983) (authorizing the licensing of additional FM radio broadcast stations); and *Report and Order in Gen. Docket 80-112,* FCC 82-243 (May 26, 1983) (authorizing multichannel multipoint distribution service stations).

104. The concept of diversity as it has been applied to the regulation of network broadcasting has been described as embodying two concepts—source diversity, which is a measure of the number of program originators, and outlet diversity, which is a measure of the number of independent transmission systems delivering programming to the public.[11]

105. In adopting the rules here in question the Commission used as its justification these long held and often repeated diversity increasing goals and it is therefore appropriate that in re-evaluating the rules we judge them again in terms of their impact on the program diversity.

106. The second stated objective of the rules—and test for their reexamination—is their effect in fostering competition. It has long been recognized that the field of broadcasting is intended to be a competitive one. The Supreme Court has stated that ". . . the Act recognizes that the field of broadcasting is one of free competition." *FCC v. Sanders Brothers Radio Station,* 309 U.S. 470 (1940). The well known formulation is that "This Commission, although not charged with the duty of enforcing that law (Sherman Act) should administer its regulatory powers with respect to broadcasting in light of the purposes which the Sherman Act was designed to achieve." *N.B.C. v. U.S.,* 63 S. Ct. 997, 1013 (1943). The Court of appeals has held that "Monopoly in the mass communication of news and advertising is contrary to the public interest, even if not in terms prescribed by the antitrust laws." *Mansfield Journal v. FCC,* 180 F. 2d 28, 33 (D.C. Cir. 1950). Thus, a critical question in re-evaluating these rules is their effect on competition.

107. The Communications Act also charges the Commission in its regulatory activities, to act so as to develop a communications system that is "rapid," "efficient," and provides service at "reasonable charges." In the context of the present proceeding, this requires that regulations adopted or continued not impose undue costs or unreasonably interfere with the efficient conduct of business, and, at the same time, that private restraints on competition not interfere with the competitive spur that keeps businesses efficient and costs reasonable. In general, this suggests that the Commission should not intervene in the market except where there is evidence of a market failure and a regulatory solution is available that is likely to improve the net welfare of the consuming public, *i.e.,* does not impose greater costs than the evil it is intended to remedy. Although a consideration of the costs imposed is implicit in every decision to impose or continue regulations, in recent years greater emphasis has been placed on identifying those costs and we believe that is particularly appropriate in this proceeding.

Economic Context of the Rules—the Video Industry

108. At the time of financial interest and syndication rules were adopted, in 1970, there were 59 million television households. Television programming was distributed by over-the-air, conventional broadcast TV and cable television. At that time, there were 690 commercial broadcast TV stations operating. Table 1 classifies those stations by channel assignment type and by status as network affiliates or independents.

TABLE 1.—COMMERCIAL TV STATIONS—1970

	Total	VHF	UHF
All stations	690	508	182
Affiliates	600	477	123
Independents [1]	90	31	59

[1] Independent stations were located in 43 of the nation's approximately 200 TV markets and served about 50 percent of all TV households.

In 1970, the average TV home received 6.8 broadcast stations. Network stations received the overwhelming preponderance of the TV viewing audience, about 90%. Independent stations attracted approximately a 9% share of the television audience. At that time, the networks had revenues of $1.1 billion, the affiliates (including those owned by the networks) had revenues of $1.4 billion and the independents received revenue of $200 million. As Table 2 shows, the networks earned $50 million and their affiliates (including the network O & O's) were profitable with income totaling approximately $400 million. The independents, as a whole, lost over $20 million, although the average VHF independent was profitable.

TABLE 2.—FINANCIAL DATA—1970 [1]

(Dollars in millions)

	No. of stations	Revenue	Income
Networks		$1,144.6	$50.1
Network O & O's	15	312.5	117.3
Affiliates	585	1,136.8	307.2
VHF	462	1,059.2	312.6
UHF	123	77.6	(5.4)
Independents	90	214.3	(20.8)
VHF	31	167.4	19.3
UHF	59	46.9	(40.1)

[1] Television Broadcast Financial Data—1970.

109. Cable television, in 1970, was principally a retransmission technology. It was a means of either distributing signals from nearby broadcast TV stations to areas where reception was poor or importing more distant stations' signals for areas where few local stations existed. At that time, there were 2,490 cable systems serving 4.5 million TV households.

110. In the production industry, there were 60 producers who created 93 prime time entertainment series for the networks for the 1969–70 season.[12] The top 4 firms held a 32.6% share of total programming hours with the top producer representing a 12.6% share. The top 8 firms created 46.3% of the total program hours and the top 20 production companies represented 68.4% of the market, in terms of hours of programming aired.[13] In 1968, the syndication industry was made up of 17 syndicators who distributed 67 off-network programs according to the NISS.[14] The top 4 syndicators had a

[11] Program diversity, measured by the number of actual program categories or types offered is also a relevant measure from the point of view of the public. However, it generally has not been a direct focus of Commission actions due to the necessity of our avoiding direct involvement in programming decisions.

[12] Network Inquiry Staff Report, p. 571.

[13] CBS and CPD submitted similar estimates for the concentration of the production industry. (Source: CBS, Vol. I, Appendix I, CPD, ICF, Vol. 2, pp. 109, 133, 215, 216.)

[14] *An Analysis of Television Program Production, Acquisition and Distribution,* Preliminary Report, Network Inquiry Special Staff, Federal Communications Commission, June 1980, Table F-28 and F-29.

63.9% share of all off-network programming hours, with the top firm representing almost half this amount (30.9%). The leading 8 distributors of off-network series accounted for 87.9% of all such programming hours.[15] In 1967 network sales of off-network television series in domestic and foreign syndication was $26.1 million, at a time when total sales of off-network series were $100 million.[16]

	CBS	CPD
No. of producers	61	61
No. of programs	94	75
Top firm (percent)	15.2	12.7
Top 4 firms (percent)	35.9	35.6
Top 8 firms (percent)	48.7	48.7
Top 20 firms (percent)	69.8	62.6

111. Since 1970, two basic types of changes have taken place in the video industry. First, the older distribution technologies have shown significant growth. Second, new technologies have entered the marketplace. Table 3 shows the growth of broadcast and cable television over this period.

TABLE 3.—GROWTH OF BROADCAST AND CABLE TV [1]

	1970	1975	1980	1983
TV households (millions)	59	70	78	83
Commercial TV stations	690	711	746	802
Affiliates	600	625	626	623
VHF	477	483	487	501
UHF	123	142	139	122
Independents	90	86	120	179
VHF	31	30	30	25
UHF	59	56	90	154
Cable television:				
No. of systems	2,490	3,506	4,225	4,825
Homes passed (millions)	9	20	35	45
Basic subs. (millions)	4.5	9.8	16.0	28
Pay subs. (millions)		0.5	9	23

[1] Source: *Television Factbook*, Services Volume 50, 1981–82, pp. 75-a, 83-a, *Cablevision*, April 11, 1983, p. 69. According to the latest Commission count, there were 844 commercial TV stations. FCC news release, June 16, 1983.

112. The average TV household now receives 9.8 signals, an increase of 3 (44%) since 1970. The growth in the number of UHF stations, many of which are independents, has been a significant factor in this increase. As more independents have become available to viewers, their total share of viewing has grown relative to the networks. [17] The percent of homes passed by cable increased from 15.3% in 1970 to 54.2% in 1983. In 1982, the networks share of the television audience had fallen from 90% to approximately 80%, while independents and other over-the-air TV stations achieved a 17% share. It is also apparent from Table 4 that the independents have improved financially over this period. In 1980, the last year for which financial data are available, affiliates (including the network O & O's) had total income of approximately $1.2 billion on revenues close to $4 billion. In that year, both the average VHF and UHF independent stations were profitable. These stations had a total income of nearly $160 million and revenues of more than $900 million.

TABLE 4.— COMPARATIVE BROADCAST FINANCIAL DATA [1]

[Dollars in millions]

	1970		1975		1980	
	Revenue	Income	Revenue	Income	Revenue	Income
Networks	1,144.6	50.1	1,673.8	206.5	3,865.2	325.6
Network O&O's	312.5	117.3	395.6	105.7	700.3	208.5
Affiliates	1,136.8	307.2	1,677.0	438.1	3,311.4	960.4
VHF	1,059.2	312.6	1,534.4	432.0	3,006.6	944.3
UHF	77.6	(5.4)	142.6	6.1	304.8	16.1
Independents	214.3	(20.8)	347.8	28.0	930.8	159.1
VHF	167.4	(19.3)	227.8	24.2	545.4	135.5
UHF	46.9	(40.1)	120.0	3.8	585.4	23.6

[1] Source: Television Broadcast Financial Data, years as cited.

113. Since 1970, cable television has become much more than a means of distributing broadcast signals. Aided by the launch of communications satellites and the removal of several restrictions on the operation of earth stations, a wide variety of cable networks has come into being since the mid-1970's.[18] Many of these networks are highly specialized, offering only news, sports, children's or cultural programs. Of the 34 basic service networks, 23 are advertiser-supported, including 3 independent stations, WTBS, WGN and WOR, which are distributed nationally via satellite and cable and often called superstations. Another 11 networks are supported directly or indirectly by subscriber fees. Cable systems also carry pay-cable channels in addition to the basic programming. The 17 currently available pay networks include movie channels, adult entertainment and regional sports channels. The largest pay cable networks are HBO and Showtime, which began principally as movie channels but have expanded their offerings to include original programming. The complete list of operating and proposed cable networks is extensive.[19] Table 5 lists examples of each type of cable channel.

TABLE 5.—EXAMPLES OF CABLE NETWORKS [1]

	No. of systems	No. of Subs. (millions) [2]
Advertiser-supported:		
WTBS	4,293	23.3
ESPN (sports)	4,055	18.8
CBN (religious, family)	3,050	18.2
Subscriber-supported:		
C-SPAN (public affairs)	1,000	10.5
Nickelodeon (children's)	1,725	9.0
PTL (religious, general)	600	6.5
Pay Cable:		
HBO (movies, specials)	3,800	11.0
Showtime (movies, specials)	1,500	3.5
The Movie Channel (movies)	2,150	2.2

Appendices D, E, H, NBC, pp. 30-33, 47, 49.
[1] Source: NBC, pp. 30-33, ICF, Vol. 2, Appendix 2, Exhibit 4, *Cablevision*, August 16, 1982, p. 70.
[2] For the advertiser and subscriber services, the number of subscribers is calculated as the number of homes where the network is available. For the pay channels, that number is the actual subscriber count.

114. The rapid growth of cable in recent years (see Table 3) is also evident from its increasing revenues. As shown in Table 6, total cable industry operating income was $1.2 billion for 1981 on operating revenues of $3.6 billion. Pay cable revenues were $1.2 billion.

TABLE 6.—CABLE TELEVISION FINANCIAL DATA [1]

[Dollars in billions]

	1977	1979	1981
Operating revenues	1.2	1.8	3.6
Pay cable revenues	(1978) 0.2	0.35	1.2
Ad revenues [2]	4.9	5.0	13.0
Operating income	0.5	0.7	1.2

[1] Source: FCC Cable Television Industry Financial Data Annual Reports.
[2] These data represent advertising revenues paid directly to cable systems and do not include the advertising revenues of the cable networks.

[15] CPD has made its own estimates of these same quantities. Its data list 20 distributors for the 1968–69 season with the top firm having a 13% share of program hours and the top 4 firms accounting for 48.8% of this market. The top 8 distributors represented 73.9% of the market, in terms of program hours. (ICF, Vol. 3, pp. 168, 177, 239, 240).
[16] *Report and Order in Docket 12782*, 23 FCC 2d 393 (1970).
[17] There are currently 86 different TV markets with independent stations, accounting for 78% of all TV households.
[18] As indicated on Table 3, currently cable systems pass 45 million homes, have 28 million basic subscribers, and have 23 million pay subscribers.
[19] See, for example, ICF, Vol. 1, Appendix 2, pp. 14–15, 25, CBS, Vol. I.

115. Several new technologies have also become participants in the distribution of video programming. Subscription television consists of a scrambled broadcast signal available only to subscribers with decoders. That technology has grown to serve 1.4 million homes in 25 markets while it had only 20,000 subscribers at the end of 1977. Multi-point Distribution Service (MDS) is a pay service delivered to consumers via microwave signal. MDS licensees are regulated as common carriers. The first MDS service became available in 1974. There are approximately 500,000 MDS subscribers at present. The satellite master antenna system (SMATV) is primarily available to multiple dwelling units since it uses antenna systems (including satellite earth stations installed on buildings) to gather programming which is then fed to the building's occupants by cable. SMATV has shown rapid growth, and already passes approximately 500,000 homes, 150,000 of which subscribe.

116. Although perhaps of less direct relevance in this context, other new forms of visual product delivery that compete with the older technologies are video tapes and video disk players. Video tape recorders not only allow prerecorded tape to be played but also permit the operator to record programs from the other media thus enabling the consumer to view programming at his leisure. Currently, there are an estimated 2.1 million homes with video recorders or about 2.6% of all households. Video disk players now are in 300,000 TV households, and this number continues to grow as new titles become available.

117. The networks, according to unchallenged data supplied by CBS, account for only 54 percent of the total video product purchases today, compared to 74 percent at the time the financial interest and syndication rules became effective. For example, 30 percent of HBO and Showtime's programs currently are produced either by them or by others for them. Daytime, a cable network showing women's programming, uses only original programming and about 55 percent of the children's programming carried by Nickelodeon, another cable network, is original with the network. HBO expects to spend $60 million on original programming in the next two years.[20] However, at present broadcast TV remains the principal purchaser of entertainment series.

118. Today, the syndication industry generates $800 million annually in revenues.[21] A staff analysis of November 1982 data from Arbitron's *Syndicated Program Analysis Report* indicates that there are currently 25 distributors of 117 off-network syndication series. According to our estimates, the top syndicator has about a 16.5 percent share of available off-network programming hours, the top 4 distributors have a 48.4 percent share of this market and the top 8 firms represent 73.8 percent of off-network programming hours.[22] Others present similar estimates.[23] The available data suggest that the off-network syndication market is relatively concentrated now, just as it was a decade ago.

119. It appears that the future of the video market likely will be shaped by the growth of the new distribution technologies, including some fledging services not discussed in any detail here such as direct to home broadcast satellites and low power television, and the incresing number of cable and pay options. AT least 38 new cable networks have already been announced.[24] It is widely predicted that prime time audiences will continue some shift away from the networks. However, forecasts of the prime time shares the networks will attract in 1990 vary widely, from 59 percent to 75 percent as the following table shows.

TABLE 7.—1990 PRIME TIME NETWORK AUDIENCE SHARE ESTIMATES [1]

Forecaster	Share
CBS/Broadcast Group	70
ABC	60–70
NBC	68–70
Doyle Dane Bernbach	65
J. Walter Thompson	63
Ogilvy & Mather	59
N.W. Ayer	75
Leo Burnett	70

[1] Source: *Broadcasting*, March 7, 1983; CBS, Vol. I, p. 115; NBC, p. 99.

	CPD	CBS	NISS
No. of distributors	25	NA	22
No. of programs	NA	NA	87
Top firm (percent)	24.2	17.8	32.1
Top 4 firms (percent)	57.4	60.9	75.3
Top 8 firms (percent)	72.2	98.3	88.4
Top 20 firms (percent)	96.7	NA	99.8

Viacom (Appendix B) lists 23 distributors of off-network series, also. However, Metromedia lists 57 syndicators (Exhibit 5) of these programs. For purposes of comparison, CPD data for 1970 show 23 distributors, the top firm with a 15.6% share, the top 4, with 45.4%, the top 8 with 69.5%, and the top 20 with 97.9%.

120. The extent to which viewing patterns will change is, to a large extent, dependent on the growth of these ne new medias. While specific predictions for 1990 vary, as Table 8 indicates, cable penetration is expected to approach 60 percent of all TV households with 45 percent of all TV homes expected to subscribe to at least one pay cable service.

TABLE 8.—CABLE PREDICTIONS FOR 1990[1]

	Basic subs. (millions)	Basic penetration (percent)	Pay subs. (millions)	Pay penetration (percent)
Doyle Dane Bernbach	57.3	60		
CBS	60.0	60	45	45
Paul Kagan	53.4	57	(1989) 46.1	
Donaldson, Lufkin and Jenrette	53.5	55	65	
Frost and Sullivan	(1991) 40.0		(1991) 34	
J. Walter Thompson		60		(1989) 30
Ogilvy & Mather				46
NBC		60		45

[1] Source: ICF, Vol. 1, pp. 20, 29; NBC, p. 27.

121. It is expected that this growth in cable service will result in basic cable revenues rising to as much as $6.5 billion and pay cable revenues increasing to $8 billion compared to expected network revenues of between $15 and $20 billion. The other pay services also are expected to grow, to the point where 77% of all TV homes will have some type of pay service. This growth is expected to come from currently available pay services, direct

[20] New York *Times*, April 3, 1983, Section 2, p. 1.

[21] CPD, p. 127.

[22] For each syndicated series, the distributor's share was weighted by program length and the number of markets where it is aired.

[23] The number of distributors of off-network syndicated entertainment series has varied little over the last decade, with the number generally between 20 and 25. The data submitted by CPD (ICF, Vol. 3, pp. 168, 189, 239, 240) and CBS (CBS Reply, Vol. I, Exhibit D, Table D–2, p. 6) for 1981–82 and the Network Inquiry Special Staff's most recent estimates (Preliminary Report, Tables F–28 and F–30) for 1977–78 are as follows:

[24] *Cablevision*, April 25, 1980, p. 98.

broadcast satellites (DBS), and low power TV stations (LPTV). In addition, the Commission has recently authorized the allocation of additional frequencies to the MDS service so that they may provide a multichannel MDS service. This multichannel capability makes it more like an over-the-air cable service and may enable MDS to be a stronger competitor in the video marketplace. While it is difficult to predict the future with certainty, the following "educated guesses" in table 9 present a broad sketch of the video distribution industry showing the growth of the various video alternatives including estimates for the state of the industry in 1990.

TABLE 9.—AVAILABILITY OF VIDEO OPTIONS [1]

(In millions)

	1970	1975	1983	1990 est.
Broadcast TV (TV HHs)	59	70	83	97
Cable TV (subscribers)	5	10	28	58
Pay Cable (subscribers)		0.5	23	45
STV (subscribers)			1.4	5
MDS (subscribers)			0.5	3.2
SMATV (subscribers)			0.15	0.5–0.8
LPTV (TV HHs)				10
DBS (subscribers)				11
Multichannel MDS (subscribers)				6–12

[1] Source: CBS, Vol. I, pp. 54–5, 79–91 and previously cited data.

122. It is extremely difficult to make estimates for the production and syndication industries of 1990. It is clear that the many new outlets will require a vast supply of programming. Some of this programming, no doubt, will be similar to the general entertainment fare currently associated with network prime time television. Other programming may well respond to much more specialized needs.

Effects of the Rules on the Network-Producer Relationship

123. Based upon the foregoing description of the video industry, we now present an analysis of the effects of the financial interest and syndication rules. The analysis is performed on each component of the system of markets that together comprise the video industry. We examine the effect of the rules on: (1) The programming market involving program producers and the broadcast television networks, (2) the off-network programming market involving syndicators and television stations, (3) the competitive situation facing the broadcast television networks and (4) the possibility of new broadcast networks.

124. *Monopsony Power of the Networks.* Part of the original rationale for the financial interest and syndication rules was a concern that networks were able to use the power of their position as program purchasers to obtain rights from program producers at less than compensatory rates. Specifically, the stated concern was that the networks would not pay program producers enough for the programs, would insist on obtaining the syndication rights as a condition for airing the programs on the networks and would exert undue creative control over the final product. In order for these concerns to be realized, two conditions regarding network behavior must be met. First, the three networks must be able to act in concert, either tactly (by parallel behavior) or collusively (by active conspiracy). Second, the three networks together must comprise the sole purchasers of the program producers' product. If either of these conditions is not met, it is not likely that the networks could exert power over program producers. This is so because, if adequate alternative program purchasers exist, any producer who may be dissatisfied with the treatment he receives by *a* single broadcast network has the option of offering his product to a different network or some other program purchaser. Competition among these program purchasers thus would ensure that the program supplier receives a competitive price (full market value) for his product.

125. After considering all the available evidence, we have concluded that the extent to which the conditions hypothesized above accurately characterize today's media marketplace is very much in doubt. First, there is evidence that the three networks do in fact compete with each other. The networks are rivals in a ratings war.[25] Ratings have been volatile in recent years, with changes occuring in the networks' relative positions.[26] Second, there has been an expansion in the number of television outlets and networks services that has caused an increase in the number of program purchasers and an increased demand for new programming. As a result, the network share in total program expenditures has declined over the years until it has now fallen to 54 percent of all expenditures on programming. The total share of the audience garnered by the networks is declining, which is further evidence that other viewing outlets are effective competitors to the networks as suppliers of entertainment programming.[27] To say that networks control the programs they buy is clearly true, but alternative program purchasers are developing to which program suppliers can turn should the networks try to lower the price they offer to program suppliers.[28]

126. Empirical research indicates that program producers, and their talent inputs, are able to renegotiate their contracts and consequently receive a higher income when their television series become more popular, i.e., achieve higher ratings.[29] Thus, through the contract renegotiation process, program suppliers are able to share, with the networks, in the higher revenues that are earned as a show gains in popularity. If networks exercised collective monopsony power against their program suppliers, we would not expect them to be forced to share this added revenue with their program producers. In fact, if the networks had such collective monopsony power we might expect that they would attempt to lower the price they offer for successful programs during the network run since the amount a program would earn during its syndication run likely would be higher. Even though its network earnings would be less, a producer would be no worse off because it could recoup these revenues when the program goes into syndication. The network would have the ability to retain all the extra revenues which are earned due to a show's popularity because a producer would have no other program purchaser to whom it could sell the program, *i.e.*, the producer has no bargaining power. The networks' apparent inability to retain all the additional revenues earned by a successful television program during its network exhibition indicates that they are not exercising collective monopsony power against the program producers.

127. The available evidence also leads us to the conclusion that collusion among the networks would be difficult to achieve and maintain. Overt collusion would be hard to conceal and would be prosecutable under the Sherman Act. With respect to tacit collusion or parallel conduct, as the Department of Justice points out, the antitrust laws might not be as effective a tool. There are reasons to believe, however, that such conduct in terms of the type of

[25] CBS comments, p. 27.

[26] CBS comments, Exhibit B.

[27] See CBS, pp. 98–99, 115; and NBC, pp. 97, 101, 103.

[28] See CBS, p. 101; and NBC, pp. 104–107.

[29] See Noll, Peck and McGowan, *Economic Aspects of Television Regulation* pp. 44–47 (1973); Owen, Beebe and Manning, *Television Economics*, pp. 38–40 (1974); Woodbury, Besen and Fournier, "The Determinants of Television Program Prices: Implicit Contracts, Regulation, and Bargaining Power," (mimeo, January 1983).

conduct here in issue would be difficult for the parties themselves. Restrictions on price competition would likely require overt conduct. However, when nonprice features of goods or services such as product quality or contract terms, are not uniform and are important determinants of the value of a product coordination problems become severe. This is clearly the case with program purchases by the networks. The Network Inquiry Final Report describes, in exhaustive detail, the complicated and delicate contracting process between networks and program producers, beginning with idea development and ending when the program goes off the air. Maintaining parallel or collusive behavior in such a complex environment would require unreasonably complicated efforts.

128. The presentations by parties alleging network market power do not persuade us that such power is sufficient to result in the deleterious effects that have been alleged. For example, evidence is presented regarding the movement of personnel from one network to another.[30] It is not clear that this movement of personnel, which purports to be evidence of network parallel behavior, occurs at higher incidence than in other industries. Moreover, such movement would make collusive activity impossible to conceal.

129. Parties also claim that failure of the networks' license fees to cover all production costs is evidence of network market power. However, it is not evident that what they term "deficit financing" is a reflection of network monopsony power. Obviously, the costs of production must in the long run be covered by revenues from all the potential uses of the program, including foreign and domestic syndication. If producer's costs were not at least met, the industry would soon be bankrupt and all producers would leave the industry. From an economic standpoint, all costs need not be covered by network payments alone simply because all costs of production are incurred before network broadcast. In fact, if the rules have any effect, they might make "deficit financing" more likely. This is so because the rules prevent the networks from purchasing the complete set of rights to a program. Consequently, producers who want to cover their production costs immediately may have difficulty in obtaining other sources of financing to replace the full financing supplied by the networks prior to the rules.

130. Finally, there is empirical evidence that networks obtained syndication rights on a fully competitive basis prior to the rules. One study, peformed in the form of higher license fees, and that the payments approximated the full market value of the rights.[31] Furthermore, our analysis indicates that networks did not obtain a "monopoly" share of syndication rights when they purchased them before the rules. In fact, the networks together obtained less than a 25 percent market share.[32]

131. *Effectiveness of the Rules.* Focusing narrowly on the concerns scrutinized in this section of the analysis, we must conclude that the rules are unnecessary if the networks have no demonstrable monopsony power. Thus, it is expected that the financial arrangements arising from the normal business relationship between the networks and program producers will equitably reflect the competitive process. Of additional concern, however, is whether, even if the networks did have a significant degree of market power, the rules effectively would preclude the networks from excercising it. Our analysis leads us to believe that the financial interest and syndication rules are unlikely to curb any network market power that could exist. The fundamental reason leading us to this conclusion is that the rules do not modify the source of any such market power, *viz.*, the structure of the market. The market structure is defined by the fact that there are only three broadcast networks. Any market power that could derive from this structure could be exerted in ways other than bargaining for syndication rights. With regard to producers in particular, other aspects of their contracts with the network (such as the license fee paid to program suppliers) could reflect their inferior bargaining positions. The rules do not change the networks' control over the nature of the programs they choose to purchase for broadcast. Even with the rules in place, each network selects which program it will air and which it will not and thus holds veto power over any content it does not wish to air. Accordingly, producers' fear of losing creative control of their programs if the networks regain a financial interest appears unfounded.

132. Further, it does not seem in the best interest of the networks to behave in a manner that induces producers to exit. If there were fewer producers, they could more effectively act collectively and excercise market power with respect to their dealings with the networks. Under such an outcome, networks would be made worse off. The networks benefit from the presence of many independent producers contending for their patronage.

133. *Cost of the Rules: Inefficient Risk Sharing.* The financial interest rules prevent networks from obtaining a financial interest in programs produced by others. Therefore, the rules force suppliers who wish to permit others to have a financial interest in their programs to choose between: (1) selling in a market with an artificially reduced number of prospective purchasers, since three major purchasers in a position to offer favorable terms have been excluded by the rules, or (2) retaining the rights or interests they would prefer to sell, thus bearing by themselves risks they would prefer to share or shift to others. The result of this artificial altering of the program market may be to reduce efficiency, competition and diversity in the supply of network programming.

134. Financing production of a good by the sale of future interests in one or more stages of distribution is a common and accepted method to distribute risk efficiently.[33] Although other members of the program production market, to some extent, are capable of bearing and hedging risk, the networks may be in a unique situation with respect to shouldering these risks. As analysts have found, (1) networks bring together an efficient nationwide group of station outlets, (2) networks have continuous information from both advertisers and station affiliates concerning changing public tastes, (3) networks are able to pool the risks of individual programs across an entire program schedule, and (4) networks have expertise in designing overall program schedules with maximum attractiveness in the face of competing schedules.[34] Further, networks may be able to promote programs more efficiently if they can coordinate network and off-network runs. This promotional aspect is important, however, only if the behavior on the part of the networks that enhances the value of a program's network run is different from that which would enhance the value of the program during its off-network run. In other words, if a network would not promote a program any more heavily if it would benefit from the syndicated run than it

[30] See ICF, p. 1-22.

[31] Crandall, "FCC Regulation, Monopsony, and Network Television Program Costs," 3 *Bell J. Economics*, p. 483 (1972).

[32] Report and order in Docket 12782, 23 FCC 2d 383 (1970).

[33] Network Inquiry, Staff Report, Vol. II, p. 406.

[34] Network Inquiry Staff Report, pp. 746-54; CBS Vol. I pp. 127-130; Franklin Fisher, CBS Vol. II, Appendix E, pp. 17-22; Alfred Kahn, p. 17; Shooshan and Jackson, pp. 5-11; FTC, pp. 31-34.

would otherwise, then the rule does not prevent promotional efficiencies. Even so, the rule may lead to shorter-than-optimal runs for network programs.

135. To the extent the rules prevent an efficient sharing of program risks, there is less investment in network programming than there would be in the absence of the rules and the quantity, quality, and diversity of programming is artificially limited. Also, inefficient risk-sharing could lead to higher program production costs. In turn, the cost of network time to advertisers and the cost of advertised products to consumers likely are greater than they otherwise would have been. The programs most likely affected by such risk inefficiencies are those that present the most risk. Thus, the diversity of programming actually produced may have been reduced because the rules have encouraged production using tried and true formulas.

136. Further, while the rules do not increase the aggregate profitability of all program producers, they may shift revenues among individual producers. Any producer less willing to bear risk than the networks might prefer to sell the rights to the network initially, but the rules bar such a producer from doing so. By making it more difficult for risk-averse producers to survive, the rules may aid those producers who are more willing and able to bear risk. Thus, if larger, established producers are better able, and hence more willing, to bear risk than smaller or new producers, the current rules work to the advantage of the larger producers who are relatively better off and insulated, to some degree, from competition and new entry. The end result may be a more concentrated and less diverse program supply industry.

137. The limitation on network-producer risk-sharing will cause significant inefficiencies only if producers are substantially less able than the networks to bear risks involved in program production. Indeed, there is some evidence that producers are currently interested in assuming some of the risk that the networks now bear.[35] This would indicate, at the least, that producers are not currently overburdened with risk. The Network Inquiry Report points out that where the probability of financial loss is assumed to be 50 percent on a single program, it falls to approximately three percent if five statistically independent programs are pooled.[36] If that level of pooling is not attained by some independent producers alone, it perhaps can be achieved through joint ventures. Further, large production companies, banks and other large corporations may have risk-spreading advantages the broadcast networks may not possess.[37] In addition to spreading investment risk across many programs, these non-broadcast entities can spread their investment risk across *networks*. Such an advantage may or may not be significant in quantitative terms. Their lack of expertise in the programming field may deter nonbroadcast entities from such investments since they may be unwilling to take large risks on projects they are unable to assess well. On the other hand, they can pool their entertainment investment risk with investments in other areas.

138. As discussed above, from a theoretical point of view the major effect of the rules as they relate to the program production industry appears to be to force inefficient risk-sharing arrangements that could cause a variety of ill effects on program producers and on the programs produced. Although intended to lessen concentration in the program supply industry and thereby increase diversity in the sources of programming exhibited on the networks, a close review of the economic effects of the rules makes it appear, at least at the theoretical level, that they could actually have the opposite effect. Considerable effort has therefore been expended in this proceeding in attempting to find empirical evidence to confirm or dispute this conclusion. Having reviewed the evidence relating to concentration in the supply market both before and after the rules, we find no evidence that the rules have served to decrease concentration in the supply market or increase the diversity of program sources. Instead, it appears that the supply market was not particularly concentrated at the time the rules were adopted and that this market was and is today a competitive one. While various definitional and statistical problems and the influence of factors beyond these rules make conclusive judgments difficult, there is some evidence to support the proposition that the rules create incentives that lead toward concentration rather than away from it.

139. There seems to be no disagreement that, in the years immediately following the adoption of these rules, the number of producers supplying programming for prime time network exhibition declined rather dramatically. Using the measurement statistics preferred by the Committee for Prudent Deregulation, the number of producers declined from 61 in the 1969–1970 television season to as low as 30 in the 1974–1975 season.[38] Averaging the data supplied from before and after the rules, again using the CPD preferred data, shows an average of 66 producers per year in the pre-rule, 1964–1971, period and an average of 47 producers per year in the post-rule, 1972–1982, period—a decrease of 29 percent. The Network Inquiry Special Staff in its study of this issue, after comparing 1969–1970 and 1977–1978 data, also found some measure of increased concentration but noted that most of the increase was due to the rise in the share of the leading firm which had doubled the number of series programs it was supplying.[39]

140. CPD argues, to the contrary, that, comparing 1969–1970 and 1981–1982 data, the number of suppliers has increased from 61 to 67. It should be noted, however, that 1981–1982 is the only season of the thirteen that have passed since the rules were adopted where this comparison would show an increase. Data contained in the appendix to the CPD comments, but not cited in the body, show that the most recent data (1982–1983) demonstrate a continued decline. Thus, even using the data most preferred by the proponents of continued regulation, there is no evidence that the rules have decreased concentration and, indeed, there is some evidence that they may have increased it.

141. Other data supplied by other parties, evidence larger and more consistent declines in the number of producers. CBS data, for example, showed a substantial increase in concentration, with the number of prime time producers dropping to 41 in 1981–1982 from 61 in 1969–1970.[40] The reason for the difference between the CBS and CPD data is that each used a different definition of producer. CBS simply counted the number of entities who had contracted with a network for the production or delivery of a program.[41] CPD counted all those who had management and/or creative responsibility or a financial interest in the proceeds from the first-run exhibition.

[35] Comments of ICF, p. 1–16. ICF contends that networks have consistently rejected producer proposals with incentive clauses for successful program performance and greater producer risk on the downside.

[36] Network Inquiry Staff Report, Vol. II, p. 8 [illegible].

[37] DOJ reply comments, pp. 4–5.

[38] ICF Vol. 2, appendix 3, p. 109.

[39] Network Inquiry Staff Report, Vol. II, p. 556. In subsequent years, the share of the leading firm declined, causing measured concentration to decrease.

[40] CBS comments, Vol. 1, p. 149 appendix J.

[41] CBS comments, Vol. 1, p. 147, footnote 279 and data submitted April 25, 1983.

142. In an effort to facilitate a comparison of the data from the two sources, the Commission's staff prepared its own estimates. The staff established set fall schedules for both the 1969–70 and 1981–82 seasons. The data submitted by CBS and CPD were then used to arrive at producer and program counts for each methodology.[42] From these data, various estimates of production industry concentration were derived. The results are presented in the tables below.

TABLE 10.—SUMMARY OF THE PRODUCTION INDUSTRY

	1969–70	1981–82
Number of Programs	75	69
Number of House	59	54

	CPD method	CBS method	CPD method	CBS method
Number of producers	61	48	65	31
Market share:				
Top firm (percent)	12.7	14.4	7.4	9.3
Top 4 (percent)	30.1	33.9	22.3	31.6
Top 8 (percent)	42.4	49.2	37.9	55.8
Top 20 (percent)	62.8	70.4	63.5	87.7
HHI [1]	381	476	283	525
Joint ventures:				
Number of Programs	17	7	33	1
Percent of programs	22.7	9.3	47.8	1.4
Number of hours	12.5	4	26	.5
Percent of hours	21.2	6.5	48.1	.9
Studios: [2]				
Number of Programs	33	34	32	33
Percent of programs	44.0	45.3	46.4	47.8
Number of hours	26.5	27	23.5	24.50
Percent of hours	44.9	45.8	43.5	45.4

[1] The Herfindahl-Hirschman Index (HHI) is a standardized measure of concentration calculated by summing the squares of each firm's market share.

[2] The major studios producing prime time network programming during the periods in question were: Universal; MGM; Warner Brothers; Walt Disney; Embassy Communications (Avco/Embassy); 20th Century Fox; Paramount; Columbia (Screen Gems); and Orion (Filmways) (Source: ICF, Vol. 2, p. 110–124).

[42] More specifically, the staff methodology first defined a base fall season schedule for each year. (For 1969 the source was the *Complete Directory to Prime Time Network TV Shows 1946—Present*, Tim Brooks and Earle March, Ballantine Books, New York, 1979. The 1981 fall schedule was derived from information in *Broadcasting*, May 4, 1981, pp. 30–1, August 17, 1981, pp. 134–5, August 24, 1981, p. 48, September 14, 1981, pp. 32–3, and November 23, 1981, p. 60.) For each program on this schedule, the producer or producers were identified from the raw data submitted by CBS and CPD. Then, for each producer and program a weight was calculated. This weight was the program length (hour, half hour, etc.) multiplied by the producer's share. For a sole producer this share was one. Where joint ventures existed, the share was equally divided among all production companies. (CPD weighted its data in this manner. CBS used the number of episodes, including reruns, as an additional factor.) Next, a total of these weights was calculated for each producer. Finally, this total was divided by the total number of prime time hours, which was equivalent to the sum of all producers' weights. The result was an estimate of each producer's market share.

143. Comparisons of these data show relatively small changes in the level of concentration in the production industry both in terms of concentration ratios and in the Herfindahl-Hirschman Index, the measure preferred by the Department of Justice. Using any of the measures, the production industry was relatively unconcentrated in 1969 and remains so today. These studies would appear to reveal that, in the production industry, the rules may have had some negative effect.

144. If it is correct that the rules function to prohibit the networks from operating as efficient risk bearers for more risk averse producers in the production of programming, then it would be expected that, after the rules went into effect, smaller producers would be increasingly forced into joint ventures with others. The chart below, prepared using the staff methodology and CPD producer definitions, does suggest some increase in the percent of programs that are produced by the major studios in combination with independents and by independents in conjunction with other independents, as theorized.

TABLE 11.—JOINT VENTURES

Producer	1969–81 (percent program)		1969–81 (percent hours)	
Network:				
Alone	4.0	5.8	5.1	7.4
W/independent	1.3	1.4	1.7	1.9
Total	5.3	7.2	6.8	9.3
Studio:				
Alone	29.3	13.0	31.4	11.1
W/independent	14.7	33.3	13.6	32.4
Total	44.0	46.4	44.9	43.5
Independent:				
Alone	44.0	33.0	42.4	33.3
W/independent	6.7	13.0	5.9	13.9
Total	50.7	46.4	48.3	47.2

Effects of the Rules in the Syndication Market

145. The second market where the effects of the rules are analyzed is the syndication market in which off-network programming is sold to local television stations. The concern has been expressed in the comments that repeal of the rules would allow the networks to exercise control over the availability of off-network programming, and that television stations, particularly independent stations in competition with network affiliates, would be affected adversely by such control. Indeed, this concern underlies much of the opposition to repeal of the rules. Commenters most commonly express a fear that some off-network programs might be "warehoused," *i.e.*, withheld from the market. Their argument is, in essence, that such warehousing of off-network programs would either drive up the price of programming or would reduce the size of independents' audiences.[43] Other commenters claim that repeal of the rules would have beneficial effects on television stations because it would permit the achievement of efficiencies in the production and distribution of programming.[44] Each allegation is discussed in some detail below.

146. *Withholding of Off-Network Programs.* The most comprehensive exposition of the argument that networks would have the ability and the incentive to withhold programming in an anticompetitive manner in the absence of the rules is contained in a study by ICF Incorporated, conducted under contract and submitted by CPD.[45] Since the ICF study was a central focus of many reply commenters, it is discussed here in considerable detail. A key assumption made by ICF in its report is that a small number of firms would have as much power over program supply as would a single supplier. ICF asserts that, in some circumstances, those few firms would restrict the supply of programs by withholding some from the market in order to increase the price of the programming that remained on the market. Although their discussion is somewhat abstract, it is essential that a brief account of it be made here. ICF's theory runs as follows. Stations choose the programs they wish to air on the basis of the net revenues each will generate. When programs of differing quality, as indicated by the potential advertising revenues they would generate, are offered to stations, the prices of the programs chosen are held down by the prices of alternatives not selected, since stations could choose those alternatives instead of the programs actually selected. Removing the best unselected program from the market will leave a poorer unselected program as the best alternative.[46]

[43] Commenters expressing this view include the Committee for Prudent Deregulation (CPD), Independent Television Stations, Inc. (INTV), Metromedia, Inc., and others.

[44] These commenters include Franklin M. Fisher and William J. Baumol, in reports submitted as appendices to the comments of CBS, Inc., and the National Broadcasting Companies, Inc.

[45] ICF Incorporated, "Analysis of the Impact of Repeal of the Financial Interest and Syndication Rule," Report to the Committee for Prudent Deregulation, January 28, 1983.

[46] Some commenters (INTV and TBS) have asserted that the networks would have an incentive to withhold their most popular programs from syndication in order to deny them to independent stations and thus damage the independents' competitive position. Since the most popular

Elimination of the best alternative program would increase the gap between the advertising revenues generated by the programs selected and the best alternative not selected. Prices of programs that are selected would then be free to rise above their original levels.[47] ICF asserts that such withholding could be accomplished by a single syndicator acting independently, and would not require collusion among syndicators.

147. ICF presents four theoretical cases in which a syndicator of television programs would elect to withhold programs from the market. In the first case, the programs withheld would not have been shown in any case, so that withholding them would not affect the programming shown. Such withholding would leave the programs available to viewers unchanged and so would not affect viewer welfare. Withholding of this sort also would impose no additional cost on the syndicator who withheld the programs, since he would not forego any revenues by withholding unshown programs. The sole direct effect would be an increase in program prices and a consequent transfer of revenues from the stations to the syndicators of the programs that are shown.

148. In addition, some supporters of the rules assert that, since stations' programming costs would rise with increasing program prices, there would be a reduction in independent stations' profits, which in turn would reduce those stations' ability to acquire high-quality first-run syndicated series or theatrical features.[48] Thus, they believe, the quality of programming on independent stations would deteriorate. Their argument does not appear to be valid, however, because one would expect program acquisition decisions to be made on the basis of the expected net revenues of the programs to be acquired, and that a loss of profits as a source of funds to purchase programs would be unlikely to affect those decisions. The same supporters of the rules state that a decrease in the profits of independent stations would retard the entry of new stations and, consequently, would decrease the likelihood of formation of a fourth network.

149. The second theoretical case that ICF discusses would result in the same effects as the first except that, in addition, the programming actually shown would change as a result of warehousing. In this second case, ICF posits some small fringe suppliers in addition to the dominant firm. If the dominant supplier owned several programs, but not the best unselected program, it could have an incentive to withhold one of its own programs that otherwise would have been selected. This would mean that the best previously unselected program would be purchased instead of the program withheld, leaving a still poorer program as the best unselected show. Such withholding would cause the prices of selected programs to rise.[49] If the dominant supplier also owned the program that became the best unselected program, it could have an incentive to withhold that program as well, thereby allowing the prices of selected programs to increase still further. In addition to the effects on prices, this strategy would cause stations' audiences and advertising revenues to fall, since programs would be withheld that would have attracted larger audiences than those actually shown. As a result viewers' welfare would decrease, since preferred alternatives would be unavailable to them. The syndicator who withheld the program (who also would be the dominant firm) would lose the revenues from the programs that were withheld, but all syndicators of shown programs would gain revenues from the increased prices of the programs that were shown.

150. These two strategies could be pursued by any syndicator who owned rights to the necessary programming. The third and fourth cases presented by ICF involve additional effects that ICF asserts the networks could accomplish because they are integrated into broadcasting and because they sell television advertising in competition with the independent stations. In the third case, the networks would raise advertising prices to a higher level than they would if they were not integrated into broadcasting. Raising their advertising rates would cause the networks to lose some advertisers to the independent stations, but as a consequence of the new demand for their time the independent's advertising revenues would increase and they would be able to pay more for programming. Then, according to ICF, the networks would be able to raise prices of off-network programs even higher than in the first two scenarios and could more than recover their initial losses of advertising revenues to the independents. Although independents may not be any worse off under this scenario—they would have higher costs but also higher revenues—consumers and advertisers would be adversely affected because advertising rates and prices of advertised products would rise.

151. In the fourth scenario, ICF asserts that the network's involvement in broadcasting would give them an incentive to carry the withholding strategy further than if they merely distributed programming. Networks could reduce the quality of programming shown by independents either by making high-quality off-network programming unavailable or by raising the price of high-quality programs to the point where the expected advertising revenues from the programs would not cover their cost. This is the case about which most commenters expressed concern, and the one which yields the most detrimental alleged effects. If withholding of programming by the networks caused independent stations to show inferior programming the independents' audiences and advertising revenues would fall. Some of the viewers lost to independent stations would switch to the affiliates or owned stations of the network withholding programming, thereby potentially

---

programs earn the highest syndication revenues, withholding them would entail higher costs to the networks than withholding other programs. As in the case of other shown programs, for withholding to be profitable, the advertising revenues gained would have to outweigh the loss of syndication revenues. Consequently most commenters rule out withholding of the best programming; even ICF states that such withholding would be less likely than withholding of less popular programming. See "Response to comments on the ICF Report," ICF Incorporated, Apr. 26, 1983, p. 14.

[47] A hypothetical example may help clarify this theory. Suppose that programs A, B, and C are available for a single time slot and would generate advertising revenues of $1,000, $800, and $600, respectively. Assume also that the cost of distributing a program (the minimum price at which any program would be sold) is $100. If program B were to sell for $100, then the maximum that could be charged for program A is $300, since A would only earn $200 more revenue than B. If the owner of program A attempted to sell it for more than $300, B would earn higher net revenues for the purchasing station. But suppose A and B are owned by the same seller. Then that seller can withhold B from the market, and if C sells for $100, A can be sold for up to $500 and still earn more revenue for the station than C. The seller has increased the price of A by $200 and lost nothing, since B would not have been sold in any case.

[48] Commenters expressing this opinion include TBS and INTV.

[49] Another numerical example may be useful. Suppose this time there are two time slots to be filled and programs A, B, C, and D, providing advertising revenues of $1,000, $900, $800, and $500, respectively, are available. Distribution cost is again $100. Programs A and B will be sold for at most $300 and $200, since the next best alternative is program C, which costs $100 and provides $100 less revenue than B and $200 less than A. If the owner of A does not own C, he cannot withhold it to raise the price of A and B. But if he owns B, he can withhold B so that C will be purchased instead. Then D will become the best alternative program. The price of A can rise to $600, since the best alternative costs $100 and provides $500 less revenue than A. The owner of A now earns more from selling A alone than he did from selling both A and B.

increasing that network's advertising revenues. In addition, if the increase in program prices or the reduction in audiences caused independent stations to reduce their hours of operation or to cease operation, and if there were no good substitutes for television advertising, then the decrease in the quantity of advertising time available would cause an increase in its price. Thus, the networks and affiliates would gain not only from increased numbers of viewers but also from increased advertising revenues per viewer. In addition, ICF concludes that viewers would have less desirable programs from which to choose and a smaller number of choices. Finally, that part of the increase in advertising prices would be passed on to consumers in the form of increased prices for advertised products.

152. *Likelihood of Withholding Programs.* The ICF theories presented above appear consistent with economic theory. Whether or not they accurately depict reality, however, depends, on several assumptions about the characteristics of the syndication market. At the heart of the theories are the requirements that the networks both be able to affect the price of off-network syndicated programming by controlling its supply, and have an incentive to do so. We examine below the assumptions underlying the warehousing theory and the likelihood that they could all be met. While we conclude that withholding is unlikely, we find that it is impossible to rule it out entirely.

153. The first assumption is that off-network programs must constitute a separate, at least somewhat distinct, market. For control of the supply of off-network programming to enable the dominant supplier to affect its price, no good substitutes must be available near the programming's prevailing price. Otherwise, increasing the price of off-network programming would merely encourage independent stations to purchase one of the substitutes. In fact, many other forms of programming are available to independent stations, including first-run syndicated programs, sports shows, theatrical films, and locally-produced programs. Nevertheless, the half-hour segments of recent off-network shows may be somewhat better suited to this time slot.

154. ICF and others opposing repeal of the rules assert that, for important time periods, other forms of programming cannot generate net revenues as highg as those of off-network programs.[50] Thus, the existence of such programming cannot constrain the prices of off-network programs. Off-network programs, they assert, cost less for similar program quality and audience ratings because their production costs have already been recouped during the network run. These parties believe that off-network programs are less risky than the alternatives because their ratings can be more readily predicted by using their ratings during the network run as a guide. In addition, they argue, for the 4:00 to 8:00 p.m. time period (a period during which independents earn a considerable portion of their revenues), longer programs such as movies and sports events are unsuitable because most viewers are unwilling to commit large blocks of time to watching television. To the extent this is true, there may be a distinct submarket.

155. The study submitted by Crandall, Noll, and Owen presents evidence that many first-run syndicated programs are shown between 4:30 and 7:30 p.m., and further, that many of those shows receive ratings as high as or higher than the highest-rated off-network programs.[51] Thus it appears that first-run syndicated programming can generate revenues similar to those of off-network programs, so that from the point of view of television stations they can be considered close substitutes for off-network shows. The study also shows that while only a few of the programs shown in the 4:30 to 7:30 p.m. period have high ratings, a large number of programs receiving more or less similar lower ratings, both off-network and first-run, are shown in that period.[52] Even if many of the best unshown programs were withheld, many more with the same potential revenues would be available. Without controlling nearly every unshown program in syndication, including first-run programs, it would be impossible to create a gap in potential revenues between the last program shown and the best unused alternative. However, to the extent that such a gap may exist, successful warehousing, following the strategy reference by ICF, Inc., might be practical. In this regard, it is appropriate to give some credence to the business judgment of industry practioners. A statement by 58 managers of independent stations asserts that there are few good substitutes for off-network programs in the 4:00–8:00 p.m. period, and the revealed preference of at least one major group owner of independent stations is overwhelmingly for off-network programs in the early fringe period. Furthermore ICF, in its reply comments, cast some doubt on the homogeneity of the marginal programs asserted by Crandall Noll and Owen.[53]

156. A second assumption underlying ICF's warehousing theory is that the networks have the ability to acquire all syndication and financial rights to most or all off-network programs. If suppliers other than the networks controlled programs that would provide good substitutes for those over which the networks gained control, then a withholding strategy could not be effective. The ICF report asserts that the networks would have the power to extract syndication rights from program producers. CPD suggests that the broadcast networks would be able to acquire all syndication rights because there are no alternative buyers for the producers' programs, and because network program contracts are negotiated at an early stage when the

[50] See ICF, "Paper 2: The Economic Effects of the Repeal of the Rule on Advertisers and Independent Stations," pp. 3-12—3-34, and comments of the Department of Justice.

[51] Robert W. Crandall, Roger G. Noll, and Bruce M. Owen, "Economic Effects of the Financial Interest and Syndication Rule: Comments on the ICF Report," Owen, Greenhalgh, & Myslinski Economists Inc., April 1983, pp. 84–5. Because the 7:30–8:00 p.m. period is omitted, the programs and ratings reported are not directly affected by the prime time access rule.

[52] *Id.*, pp. 83–86. ICF, in fact, defines the market more narrowly as recent off-network programs shown between 4:00 and 8:00 p.m. and between 11:00 p.m. and 1:00 a.m. Others, however, present evidence that programs shown in other time periods substitute readily for these programs. An FCC staff study reports that all but one of the 101 most popular syndicated programs are shown in more than one daypart. In fact, 42 precent of them appear in five or six dayparts. An implication of this fact is that while movies, sports, and the like may not be usable in the 4:00–8:00 p.m. period, they can be substituted for series shown in other dayparts that could be shifted to that period. *See* Jonathan D. Levy, "Is There a Separate Market for Off-Network Programming and How Easy Would It Be to Collude Therein?", p. 4. In a study submitted with CBS's reply comments, Joskow shows that a typical station shifts many programs between 4:00–8:00 p.m. and other dayparts. These station's audience shares, with few exceptions, appear fairly constant across dayparts. Paul L. Joskow, "Comments on the Effects of Repeal of the Financial Interest and Syndication Rule," in Reply Comments of CBS, Inc. Appendix B. Vol. 2, Table 20; ICF Exhibit 1–23. Joskow also notes that older off-network programs are good substitutes for recent ones. In a survey of ten top-rated independent stations, off-network programs in syndication more than five years accounted for about one-third of programming time between 4:00 and 8:00 p.m.; the stations broadcast an average of two programs more than ten years old during this period. *Id.*, Tables 16, 17. Joskow estimates that in a market with three affiliates and two independents, about sixty half-hour series a year—far too many to be supplied from popular, recent off-network fare—would be required to fill the 4:00–8:00 p.m. time period. *Id., p. 30.*

[53] Comments of CPD, attachment 3, comments of Metromedia, Inc. at 35 and ICF, Inc. response to comment of the ICF Report at 12–13. It is noted that while Crandall, Noll, and Owen suggest that the supply of syndicated programming is elastic and hence that withholding is impossible, their own discussion shows an inelastic curve.

producers are particularly vulnerable.[54] The fact that syndication rights are acquired early in a program's life, before the program's success is known, means that the networks would have to acquire syndication rights to most of their programs, whether they eventually went into syndication or not. While evidence concerning networks' market power in the purchase of programming appears mixed, as discussed earlier, there appears to be considerable evidence that contracts between networks and program producers tend to be informal and flexible, allowing renegotiation if a program becomes successful.[55] Thus members of the production industry appear to retain large shares of the profits of successful shows.[56] If so, it appears likely that producers would be able to retain a financial interest in syndication rights if those rights proved valuable.

157. If the networks merely bought syndicated rights in a competitive market, then they would have to pay the full market value for those rights. If the prices paid reflected the full value of the programs, warehousing would be pointless, since such prices would incorporate all the revenues the programs would be expected to generate in syndication. Consequently, all the gains from withholding programs would be lost. Even if the syndication rights were worth more to the networks than to other potential purchasers, so that the networks could outbid everyone else, price competition among the networks could result in the full market value of the rights being paid. If, however, there is collusion, either overt or tacit, among the networks in the purchase of programs, prices might not rise to their full competitive market value.

158. As a practical matter, if the rules were repealed, the networks initially would hold no syndication rights, because they have been prevented from acquiring them up to this time. If they began acquiring such rights immediately, the programs whose rights they bought would still not enter syndication for several years.[57] For some years thereafter an inventory of economically-useful older off-network programs whose syndication rights belong to non-network companies would remain to compete with the networks' programs. In the meantime, series produced for cable or other new media would reach syndication and provide additional competition. Therefore, even if it were true that the narrowly-defined off-network program market was the relevant one and even if the networks could acquire control of recent off-network program, they would continue to face competition from other sources. Although, as has been noted, some types of anticompetitive conduct are difficult to police, if the networks did acquire syndication rights to most off-network programs, that fact would be readily observable to the Commission, the Department of Justice, and the Federal Trade Commission.

159. A third assumption underlaying the warehousing theory is that the networks must be able to collude in the sale of programs. The ICF Report asserts that a syndicator who owned even a small number of off-network programs might be able to withhold some of them and raise the price of all off-network programs that were shown.

160. As discussed above, withholding a program that would have been shown, or the best unshown program, causes a new program to become the best unshown program. If the revenue potential of the new best unshown program is substantially lower than that of the original one, then withholding can raise program prices significantly. ICF presents a hypothetical example in which program prices are driven up by a series of program withdrawals by three suppliers. However, as pointed out by Crandall, Noll, and Owen, once these programs have been withheld, the higher program prices create an incentive for individual syndicators to increase their profits by re-offering withheld programs at relatively low prices.[58] If they do so, program prices will fall to their original levels, and warehousing will fail. ICF's model prohibits such behavior, but provides no explanation of why it would not occur. In fact, collusion among program syndicators appears necessary to prevent reoffering of withheld programs.

161. This analysis leads us to believe that warehousing would require collusive behavior among syndicators in the sale as well as in the purchase of programs. It is widely believed that most collusive agreements tend to be unstable because the parties to the agreements face powerful incentives to violate them.[59] If a collusive agreement raised prices above competitive levels, a firm could secretly lower its prices or sell products instead of withholding them, and thus could expand its share of the market, and its profits, at the expense of the other parties to the agreement. Long-term maintenance of a collusive agreement requires certain conditions. Among other things, because of the incentives to violate such agreements, the colluders must be able to police each other's activities on a rather detailed level. Adherence to the agreements must be visible to the colluders but, because such agreements are illegal under the Sherman Act, adherence must be invisible to everyone else. To make collusion manageable, the number of firms needs to be small and the terms of the agreement need to be simple. In addition, if the firms have differing interests, possibly as a result of their having different market shares or cost conditions, the would-be colluders may find it difficult to find terms on which they can agree. For instance, if one network held several marginal programs but few highly popular ones, it would gain little from warehousing, and side payments might be required to induce it to participate. In addition, since higher-than-competitive prices would entice new firms to enter the market, barriers to entry must exist to prevent potential new firms from offering a similar

[54] Cable networks have begun to buy program series, so that the networks may in fact no longer be the sole purchasers for the producers' output. At the time comments were filed in the proceeding, some parties, including the Department of Justice, questioned the significance of these alternative buyers. Indeed, ICF, Inc. stated that "not one high quality series has ever been sold to pay cable." Now many examples of such programming could be cited. For instance, Home Box Office (HBO) now has two series in production, and HBO executives expect that original series will eventually make up about one-third of its original programming schedule. *Multichannel News*, February 14, 1983. Cinemax has recently bought the program "SCTV," dropped by NBC. New York *Times*, May 18, 1983. The Disney Channel plans to show 13 original series, making up 50 percent of its daily lineup. *Variety*, April 20, 1983.

[55] *See* Network Inquiry Staff Report, pp. 490–495, 515–526. See also Joskow, pp. 17–19.

[56] Stars of hit television series have been able to acquire from the networks commitments worth several million dollars to use the stars' companies for production of future series. The magnitude of the agreements suggests that in fact the production industry possesses considerable powers vis-a-vis the networks. Los Angeles *Times*, January 23, 1983.

[57] As discussed earlier, about 80–100 episodes, which would require a network run of four or five years, are considered necessary for successful syndication. FCC Network Inquiry Special Staff, pp. 410–411. In a study for NBC, Box, Allen, and Hamilton, Inc. estimate that if the networks acquired distribution rights to 50 percent of their prime time entertainment series—almost twice the percentage acquired before adoption of the rule—by the year 1993 they would jointly control less than 25 percent and by the year 2000 less than 40 percent of off-network programs shown in early and late fringe on independent stations in the top 20 markets. Reply comments of NBC, pp. 78–79.

[58] Crandall, Noll, and Owen, pp. 59–64. First-run programs would also become relatively more attractive, and producers would have an incentive to expand the supply of such programs.

[59] For a thorough presentation of current economic thought concerning the conditions facilitating and limiting oligopolistic coordination, see F. M. Scherer, *Industrial Market Structure and Economic Performance* (Chicago: Rand McNally, 1980), pp. 169–227. See also George J. Stigler, "A Theory of Oligolpoly," *Journal of Political Economy* 72 (February 1964): 55–59.

product and undercutting the prices of the existing ones.

162. An examination of the syndication industry for the presence of these necessary preconditions helps determine the likelihood of collusive warehousing in this industry. The market for syndicated programs is composed of a large number of local markets with widely differing characteristics. The number of programs sold in a given market varies with the number of stations in the market. In addition, since demographics and tastes vary from market to market, different programs will be popular in different markets, and programs' ratings will differ firm market to market.[60] In addition, ratings will change over time as new programs enter the market and old ones become outdated. Moreover, the prices advertisers ae willing to pay for a given audience size differ with the demographic characteristics of the audience. Thus, the revenues that will be generated by a given syndicated program depend on many characteristics of the program and the market—and are basically unknown in advance. Given the differences in demand conditions across markets, the specific programs that would have to be withheld for the warehousing scheme to succeed would differ from market to market. Even if there were only a single syndicator, he would not know with any degree of certainty which programs to withhold from which markets. If he withheld a program that would have been sold he would forgo the revenues from the sale of that program. A successful warehousing scheme would appear to be difficult to devise even if collusion were unnecessary and all the other necessary conditions were met. However, to the extent a large fraction of markets had similar characteristics, the withholding process would be simplified.

163. In addition, accomplishing a collusive warehousing plan would appear to require detailed, frequently-updated agreements with different provisions in different markets. The complex nature of such agreements would tend to make them difficult to reach tacitly. Collusion under such circumstances would probably require explicit negotiation and agreement, and might be highly susceptible to detection. The colluding syndicators would have to considere the gains from their collusion great enough to justify the risk of being found out and prosecuted. Moreover, a study by Owen, Beebe, and Manning suggests that, in the past, the networks may have been able to coordinate their behavior in simple matters such as the number of reruns but not on more complicated issues such as the level of program quality.[61] Warehousing may fall someplace between the extremes. Finally, FCC actions encouraging the entry of new competitors and the expansion of new media technologies such as cable, MDS, STV, and, in the future, DBS and LPTV, have provided or will provide alternatives to the networks, both in the purchase of programming from producers and as a source of programming to indpendent stations. Thus they have greatly reduced the likelihood that collusive agreements would be successful.[62] In short, the likelihood that the networks would be able to reach and maintain collusive agreements under all these conditions appears remote, even if off-network programs had no good substitutes and the networks held syndication rights to all of them.

164. These factors suggest that collusion among the networks would be difficult. Nevertheless, the Department of Justice, one of the two principal government agencies responsible for antitrust enforcement, indicates that the possibility of tacit collusion cannot be ruled out.[63] While noting the difficulties of coordinating withholding across many separate geographic markets, the Department suggests that crude formulae, based on the number of independent stations per market or the number of available time slots in certain markets, could be used to facilitate collusion.

165. Although the Department of Justice does suggest that the networks would have stronger incentives to "warehouse" than other syndicators,[64] it is worth remembering that, if the networks could profit from a withholding strategy such as that described above, so too could existing syndicators. Since the syndication market appears to be moderately concentrated, collusion might also be possible there.[65] Consequently, entry into the syndication market by the networks might in fact reduce the likelihood of warehousing, since it would reduce the level of concentration in that industry.

166. The third and fourth scenarios presented by ICF require further preconditions, in addition to all those described above. As noted above, in ICF's third scenario, control of off-network programs would allow the networks to raise advertising prices higher than they would otherwise. They would lose some advertisers to independent stations, but because independent's advertising revenues would rise the independents would be able to pay more for off-networks programming. The networks would then be able to raise off-network program prices and recapture some of the lost advertising revenues.

167. To affect advertising prices, the networks must be able to collude in setting advertising prices, as well as in the purchase and sale of programming. We have noted the difficulties of collusion in the sale of programs above; similar difficulties would confront an attempt to collude in the advertising market.

168. In a study submitted with CBS's reply comments, Joskow points out that even if the networks could succeed in raising advertising prices, there would be many leakages that would reduce the amount of their advertising revenue loss that the networks would be able to recapture from independent stations.[66] Only some of them are noted here. First, if advertisers consider that other forms of advertising are good substitutes for television advertising, increases in television advertising prices will merely cause advertisers to shift to radio, newspapers, or other media. Second, if advertising rates rise, some advertisers will simply choose to advertise less. Third, network stations must hold a large enough share of the advertising market so that, if they reduce the supply of advertising time to raise the price, the independence cannot counteract the effect by increasing their own supply of advertising.[67] At the same time, the

[60] The study by Crandall, Noll, and Owen reports that program ratings depend on a large number of program and market characteristics. It also presents evidence that the ratings of off-network programs vary widely across markets. Crandall, Noll, and Owen, pp. 71–72.

[61] Bruce M. Owen, Jack H. Beebe, and Willard G. Manning, Jr., *Television Economics* (Lexington, MA: D.C. Heath and Company, 1974), pp. 103–111.

[62] FCC actions facilitating entry or expansion of new video media include *Deregulation of Recieve-Only Domestic Earth Stations*, 74 FCC 2d 205 (1979); *Report and Order* in General Docket No. 80–603 (authorization of direct broadcast satellite service), 47 F.R. 31555 (1982); *Third Report and Order* in Docket 21502 (subscription television deregulation), 47 F.R. 30069 (1982); *Report and Order* in BC Docket 78–253 (authorization of low-power television), 47 F.R. 21468 (1982); *Report and Order* in Docket 80–112 (multi-channel MDS), adopted May 26, 1983.

[63] Reply Comments of the United States Department of Justice at 15–18.

[64] *See* Reply Comments of the United States Department of Justice at 19–20 for a discussion of their rationale in this regard.

[65] *See* ICF, Vol. 3, Appendix 4, pp. 175–242; Joskow, pp. 10–11, Table 8.

[66] Joskow, pp. 35–47.

[67] Joskow points out that the networks' share of total television advertising in only about 40 percent, which is probably too small to give them substantial power over advertising prices. So increasing the level of television advertising prices would have to be accomplished through the affiliates and O&O's. It is not clear how the networks would induce affiliates to participate in such a strategy, since the

smaller the independent's share the smaller the gain to the networks from increasing the prices independents must pay for programs. Fourth, off-network programming must make up a large percentage of independents' total programming. While the prices of all television advertising will rise, the networks will only be able to recapture gains from increased in advertising revenues for advertising shown during off-network programs. Fifth, as Joskow points out, the price of a program is determined by the difference between its advertising revenues and those of the best unshown programs. As advertising prices rise, the revenues of both programs will rise proportionately. So the increase in program prices will only be a percentage of the increase in advertising revenue. Clearly, in the process described above leakages occur at several stages, so that the networks can extract only a fraction of the increase in independents' advertising revenues. Joskow presents calculations demonstrating that even under very favorable assumptions, the networks could at best break even pursuing this strategy. The major effect would be that independents would gain at the expense of advertisers and consumers. The scenario thus appears to be, as Joskow asserts, "a theoretical curiosity that has not empirical significance." [68]

169. In the fourth case presented by ICF, the networks would carry the withholding strategy further than would a syndicator who did not sell television advertising because they would benefit from independents' losses of audiences and advertising revenues. In this scenario, higher program prices would cause independents to show poorer-quality programs and thus lose viewers, reduce hours of operation, or both. Networks and affiliates would benefit both from larger audiences and from a reduction in the supply of audience-minutes of advertising in the market, which would raise advertising rates per viewer. For networks to be able to affect independent's audiences and advertising revenues in this manner, all the conditions required for warehousing must hold. If there are a large number of programs of equal value available to replace the last unshown program, the networks could not raise program prices and could not cause the independents to lose viewers. In addition, as in the case described above, there must be no good substitutes for television advertising, or increases in television advertising prices will cause advertisers to desert the medium.

170. If the networks withheld programs that otherwise would have been shown, the effect on advertising revenues would have to be large enough to outweigh the loss in syndication revenues from the programs withheld from the market. However, only some fraction of the audience lost to the independents would accrue to the network withholding the program; the rest would turn to affiliates of other networks, other independents, cable systems, or other forms of video entertainment, or would simply do something else with their time. ICF claims that the primary effect of warehousing would occur in the 4:00–8:00 p.m. time period, since that is the only period when independents depend primarily on off-network programming. However, the evidence shows that, except for a half hour of news, the affiliates show almost no network programming during that time period. Thus, most of the gain from warehousing would accrue to the affiliates, not to the networks, except in the case of the few owned-and-operated stations. No mechanism is presented whereby the network could extract the affiliates' gains.[69]

171. ICF also argues that increases in program prices might cause independents to reduce their hours of operation or cease operation entirely. The only time period when they might cut back their hours as a result of higher-priced off-network programming is the period from 11:00 p.m. to 1:00 a.m. But Joskow points out that in a survey of independent stations, off-network programming made up only 25 percent of the programming shown during this period, and that first-run programming and movies appeared to be very good substitutes for off-network programming during this period.[70] Warehousing would not likely be successful during this period, therefore, and even if it were, audiences are sufficiently small that there would be little effect on either independents' or networks' revenues.

172. Past experience may provide useful evidence concerning the likelihood that networks would withhold programming from syndication. The only empirical evidence regarding the networks' actual acquisition of syndication rights and warehousing of programs comes from the period before the rules became effective, just over ten years ago. Prior to adoption of the rules, the networks acquired only a small percentage of the syndication rights to off-network programs.[71] None of the commenters asserts that the networks warehoused programs during this period. Some commenters state that the networks' failure to warehouse programs at that time shows either that they were unable to gain control of syndication rights or that it would not have been profitable to warehouse programs.[72] Thus, those commenters think that this provides good evidence that they would not do so if the rules were rescinded. ICF, on the other hand, states that the networks' behavior prior to adoption of the rules is irrelevant because the independents have become much more profitable since the introduction of the rules. Consequently, they assert, revenues from syndication have risen and the potential returns from warehousing are greater than in the past. ICF also argues that, before adoption of the rules, scrutiny by the Commission and the Department of Justice deterred the networks from engaging in warehousing.

173. It should be noted here, that if the potential revenues to be derived from withholding programming are higher, then the cost of acquiring syndication rights will also be higher than in the past, unless the networks can obtain those rights at below-market prices. We have noted above that it is unlikely that networks will be able to extract such concessions from program producers. In addition, the ratio of stations' profits to expenditures for purchased programs appears to have remained about

affiliates would only lose advertising revenue and would regain nothing in the syndication market. There are only three markets with three O&O's, and there are enough independents in these markets to make it unlikely that the O&O's could exercise market power. Indeed, Fournier and Martin present evidence that local stations do not exercise market power in the sale of non-network advertising. Gary M. Fournier and Donald L. Martin, "Does Government-Restricted Entry Produce Market Power?: New Evidence from the Market for Television Advertising," 14 *Bell Journal of Economics* (1983), pp. 44–56.

[68] *Id.*, p.44.

[69] It is useful to remember that the third and fourth scenarios discussed above are the only cases that have been presented in which the networks might have greater power or incentive than any other syndicator to manipulate the syndication market. If these effects are considered unlikely, then any remaining possibility of warehousing is as likely to occur through existing syndicators as through the networks.

[70] *Id., p. 50, Table 16.*

[71] NBC in its comments asserts that the networks acquired syndication distribution rights in only about 25 percent of producer-supplied prime time entertainment series programming in the period immediately before the rules were adopted. Comments of National Broadcasting Company, Inc., p. 207. ABC states that in its experience, syndication rights were almost never acquired if the producer had a syndication arm. Comments of American Broadcasting Companies, Inc., p. 114.

[72] These commenters include CBS, Inc.; Franklin M. Fisher, William J. Baumol, and Paul L. Joskow in appendices to CBS's comments; and Alfred E. Kahn.

constant between 1970 and 1980, suggesting that no great increase in the potential for syndication profits has occurred.[73] In 1967 domestic syndication sales had already reached $139.2 million, which suggests that if warehousing were a profitable strategy under any circumstances the potential returns were already far from negligible.[74] There is, therefore, no obvious reason why a withholding strategy would be profitable in the future it it was not in the past. Indeed, since the networks have a smaller share of the television audience than in 1970, less of the benefit of diversion of audiences from the independents would accrue to them. And, as a consequence of the current rulemaking, the networks are now subject to scrutiny at least as intense as before the adoption of the rules. Hence, the fact that warehousing did not occur before the adoption of the rules appears to provide useful evidence that it probably would not occur if the rules were rescinded.

174. Several commenters assert that the increasing numbers and profitability of independent stations since the adoption of the rules provide evidence that the rules have been effective and beneficial.[75] In fact, however, the number of independent television stations appears to have increased in the years 1967–1971 and again after 1977, but not in the years immediately following adoption of the rules.[76] In any case, implementation of the All-Channel Receiver Act, the expansion of cable, which improved reception of UHF stations, growth in demand for television advertising, and the Prime Time Access Rule undoubtedly contributed to independent stations' success during this period. While the availability of attractive programming has no doubt been a factor in independent station growth over the last decade it would be extremely difficult to disentangle the effects of all these factors and to what extent the financial interest and syndication rules affected the growth of independent stations.

175. *Other Effects on Television Stations.* Some commenters have asserted that repeal of the rules would have effects on television stations other than through warehousing. For instance, comments by Fisher and Baumol, attached as appendices to CBS's comments, assert that if the rules reduce the efficiency of program acquisition by the networks, they will cause network programs to have lower quality or higher costs than they would have otherwise. This will reduce affiliates' audiences and revenues. In the long run, they state, the effect will spread to independents as the quality of off-network programming available in syndication declines. The effect of this will be a long-term loss of audience by broadcast television to other media. Although we have no empirical estimates of the size of this effect, it is undoubtedly detrimental to the entire broadcast television industry.

176. In addition, as noted above, entry of new competitors into the syndication industry might hold down costs of syndication and reduce prices of syndicated programming to television stations. Again, by preventing the networks from entering this industry, the rules may keep program prices higher than they would be otherwise and may adversely affect all television stations.

Effects of the Rules on Television Networks

177. This section considers the effects of the financial interest and syndication rules on the three major broadcast networks. The following section examines the likely effects of the rules on the prospects for forming additional major networks.

178. In considering the effects of the rules, it is helpful to recall the recent changes in the competitive position of the networks. As discussed above, at the time of adoption of the rules in 1970, the three broadcast networks held a commanding share, over 90 percent, of the video audience. Together with their affiliates they captured about 92 percent ($2.6 billion) of television advertising revenue. Independent television stations had 9 percent of the audience and about 9 percent of the revenues. Only 2500 cable systems existed; pay systems were almost nonexistent.

179. In the intervening years competitors have made significant inroads into the broadcast networks' position. The number of independent television stations has almost doubled in the past decade, and their revenues have increased more than threefold. By 1980 the number of cable systems had increased by 70 percent and the number of subscribers had grown by 250 percent. Both continue to grow rapidly. In the mid-1970's, cable networks came into being, providing programming to cable systems via satellite. Over-the-air subscription television and multipoint distribution service have experienced significant growth in major markets. The growth of these other services has eroded the networks' share of the video audience to 80 percent.[77] Even more telling is the decline in the proportion of video product purchased by the networks over this period, which has fallen from 74 percent to 54 percent since adoption of the rules. The purchasing power of the other video media has, thus, grown substantially.

180. Most observers expect the growth of these non-network video outlets to continue; in addition, new technologies, such as direct broadcast satellite (DBS) systems and low-power television, are expected to provide many additional channels in most localities. DBS in particular will provide programming on a national or regional basis, in direct competition with the broadcast and cable networks. Thus the networks' share of the total audience appears likely to continue its decline. As shown in Table 7 *infra*, industry analysts predict that by 1990 the network share of the prime time audience will lie between 59 percent and 75 percent. Revenues from pay cable are predicted to reach $8 billion by 1990, over and above an estimated $6.5 billion for basic cable. These estimates compare favorably with the $15 to $20 billion combined revenues predicted for the networks. Of course all predictions of the future contain some uncertainty, as recent setbacks experienced by pay television stations show.[78] Nevertheless, the effects of the rules must be considered in the context of a market in which the dominance of the networks is clearly eroding, and additional networks promise to provide major alternatives in the distribution of programming.

181. As discussed above, most analysts consider a primary effect of the rules to be the prohibition of voluntary arrangements to distribute the risk of program production. Since it is impossible to predict before a program is produced whether it will be successful in syndication or even go into syndication, syndication rights or financial interest in program production are highly risky assets. If the networks are in a better position than other entities to bear this risk, then it will be more efficient and less costly for the networks to hold these rights. If the networks are prohibited from purchasing them, the cost of programming to the networks will be higher and their competitive position

[73] Joskow, p. 16.

[74] Reply Comments of ABC, p. 9.

[75] These include the Association of National Advertisers, Inc.; the Communication Commission of the National Council of Churches of Christ in the U.S.A. and the Office of Communication of the United Church of Christ; INTV; Metromedia, Inc.; and Viacom International, Inc.

[76] Joskow, Table 1; ICF Exhibit 1–22.

[77] Evidence submitted at the oral proceeding by ABC shows network audience in 36 channel cable homes in one market [Tulsa] down to a 56 percent prime time audience share.

[78] *Business Week*, May 16, 1983, p. 28.

relative to other program sources will be weakened. The Network Inquiry Special Staff and subsequent analysts have concluded that in fact the networks stand in a unique position to minimize the risks associated with new television series.[79] This is true for a number of reasons. First, they can ensure exposure of the programs through an efficient set of outlets. Second, they have information on viewers' tastes that gives them an unusual ability to judge the likely success of programs. Third, they can pool the risks of a large number of programs, so that the failure of any individual program will not cause them severe harm. Finally, they can choose programs and schedule them to maximize the value of the entire lineup.[80] Small producers with only one or two programs lack the risk-pooling capacity of the networks; banks or other financial institutions cannot judge as well as the networks the potential success of new programs.

182. In many situations, as a consequence, syndication rights may in fact have greater value to the networks than to any alternative holder, and prohibiting the network from holding them will cause the cost of programming to be higher and, in extreme circumstances, may prevent programming from being produced that might be produced otherwise. If less investment in programming occurs as a result, or if networks choose less risky programming than they would if they could obtain syndication rights, then the quality and diversity of network programming, and the networks' competitive position relative to the other media will be harmed.

183. Shooshan and Jackson assert, plausibly, that the rules handicap the lowest-rated network in attempting to improve its position relative to the more popular networks. The network may wish to buy what it believes to be high-quality programming in order to increase its audience. It will value the syndication rights to such programming more highly than would the producer or other holder of the rights, who would discount their value because the programs would be shown on a low-rated network. Thus the network will be deprived of an opportunity to receive the rewards from a risk it is willing to take, and will be less likely to take the risk as a consequence.

184. A further effect of the rules may be to prevent the networks from entering into lines of business that they are naturally positioned to enter and where they might operate more efficiently than other entities and might provide additional competition. Since the expansion of many new delivery modes makes the future direction of the home video industry extremely unpredictable, a sensible strategy for any participant in the market would be to hedge his bets by experimenting in various markets and with various delivery methods. The rules inhibit such efficient adaptation to changes in the market by prohibiting, or making unnecessarily costly, many reasonable ventures. For example, they prevent network owned and operated stations from syndicating their own, locally-produced programs. They prevent, for instance, CBS Records from syndicating video productions of their recording stars' performances; and they prevent a network publishing subsidiary from distributing audio-visual "tele-courses" and associated texts, through noncommercial stations. Because of the rules, programs produced and owned by networks can be distributed to cable systems but not to broadcast stations, except through the network feed, which deprives broadcast audiences of access to the programming.[81] It is difficult to see how the domestic program production or syndication markets could be harmed by any of these practices. In each case syndication could be performed by some other entity, but in cases where a network is best positioned to perform the job an efficiency loss to society is incurred if it is not allowed to do so.

Effects of the Rules on New Networks

185. The financial interest and syndication rules as currently drafted also would apply to new broadcast networks, and to the extent that the rules hinder the development of new networks they limit competition with the established networks. Companies that now engage in syndication would be barred from networking, unless they ceased their syndication activities.[82] Such companies might in fact be ideally positioned to enter networking, and requiring them to choose between networking and another important line of business may in fact provide a major deterrent to entry into networking.

186. Of particular importance, the rules could inhibit the formation of so-called hybrid networks, that is, networks serving both broadcast and cable affiliates, by deterring existing cable networks from distributing programming to broadcast stations. Viewers in areas not served by cable would be harmed, and if the cable network could not survive serving only cable outlets, cable viewers would also lose. Since a new network would probably have only a few outlets in the beginning, and in fact might never reach the coverage of existing broadcast networks, the ability to distribute programming through more than one medium might be extremely important for attaining the scale necessary to operate efficiently.

187. In addition, if a new network had the option of supplying either a broadcast station or a cable system in a given locality, competition between the two outlets for programming would improve the terms on which the network could sell the programming. Preventing cable networks from serving broadcast stations in effect protects cable system operators from competition for programming.

188. In the long run, as the foregoing suggests, an effect of the rules, as presently drafted, could be to create incentives that cause new networks to use non-broadcast means of distribution. If so, conventional broadcasters will be deprived of sources of programming that might otherwise be available, and audiences will increasingly turn to cable, DBS, and other media. To the extent that the rules affect the choice of media they prevent the broadcast networks from competing fairly with the emerging media. They also distort the market in ways that prevent programming from being distributed in the most efficient manner and by the means preferred by viewers. These effects of the rules were unforeseen, indeed unforeseeable, at the time of their adoption. It would not be surprising if the rules had additional unintended and unforeseen effects reducing the efficiency of the market and service to viewers.

IV. Conclusions and New Regulations

189. In adopting the financial interest and syndication rules, the Commission stated that the rules could "readily be changed or rescinded" if they failed to achieve their intended purpose.[83] We have sought in this proceeding to determine if in fact these rules have achieved their intended purpose and have concluded that, in many respects, they have not.

190. When the rules were adopted, the Commission indicated its belief that this

[79] Network Inquiry, Staff Report, Vol. II, pp. 616–17; Franklin M. Fisher, CBS Vol. II, Appendix E, p. 3; William J. Baumol, CBS Vol. II, Appendix F, p. 12.

[80] CBS, p. 127.

[81] Shooshan and Jackson, pp. 28–33.

[82] The Christian Broadcasting Network had to receive a waiver from the Commission to distribute programming to stations by satellite, and is limited in the number of hours per week it can broadcast by the terms of the waiver. *Id.*, p. 27.

[83] 23 FCC 2d at 397

form of regulation would contribute to both the diversity of programming available to the viewing public and the competitiveness of the television program production and distribution systems. At that time, the Commission focused almost all of its concern on the relationships between the networks and the packagers and producers of network entertainment programming. In the present proceeding, it is also argued with considerable force that regulation is necessary to structure the relationship between the networks as potential program syndicators and the independent television segment of the broadcasting industry. Because the concerns addressed when the rules were adopted and the new rationales for their continuation are in many respects substantially different, it is appropriate that they be addressed separately.

Regulation of Network/Producer Relationships

191. The set of concerns principally focused on in adopting these rules had to do with redistributing economic power from the three national television networks to that group of companies that produce and package television entertainment programs. In adopting the restrictions imposed by the rules, the Commission indicated its belief that the economic strength and ability of the program suppliers "profitably to operate" would thereby be "greatly enhanced" [84]; that the rules would insure the availability of independently produced, first-run syndicated prime time programming [85]; that a "conflict of interest" would be eliminated that had caused the networks to select for exhibition programs in which they had a financial interest, presumably in place of superior programs in which they had no interest [86]; and that diversity and competition in the program supply markets would be fostered.[87] It has also been argued that the rules were intended, in some measure, to shift creative control over programs exhibited on the networks to the program suppliers.[88]

192. Shortly after the rules were adopted, independent scholars began to criticize various aspects of the economic reasoning that led to their adoption.[89] One study of the rules, published in 1978, concluded that "the Commission seriously misunderstood the economic realities of the program procurement process, and as a result, adopted rules which had no chance whatsoever to achieve their intended result." [90] In the mid-1970's, the Commission had also come to believe that its network regulations were in need of a thorough review and therefore commenced the proceedings in Docket 21049 to complete that process.[91]

193. In the course of that proceeding a detailed analysis of the network/program supplier relationship was undertaken. Numerous participants in the process were interviewed, extensive data relating to the development of network programming was reviewed, and the contract files for a large number of network programs were examined. At the conclusion of this inquiry, a staff report was prepared and released for public comment. This report, generally agreeing with the earlier scholarly research, concluded that the rules were based on incorrect perceptions of the nature of the economic markets involved, would be ineffective in accomplishing their stated goals, and should be eliminated.

194. With respect to the Commission's attempt to readjust bargaining power between the networks and the suppliers of programming, the *Report* made the following comment [92]:

> One allegation is that networks employ bargaining power to exact "unfair" or "excessive" terms or "low" prices from program suppliers.* Such allegations should not be of concern to the Commission, for they raise only the question whether program suppliers have been sufficiently compensated for their work. The networks, even if exercising complete monopsony power, cannot pay less for a program than the value the suppliers' resources have in their best alternative use. The assertion that networks can or will acquire programs for less than their costs simply will not withstand scrutiny. Once it is understood that networks, no matter how powerful, cannot purchase programs at rates that are unprofitable for suppliers, contentions that contract terms harm suppliers can be seen for what they are—allegations that suppliers are not paid as much as they would prefer. Most importantly, the public interest—the interest of viewers in receiving numerous, diverse, quality programs from which to choose—is not implicated by such contentions. Moreover, even if viewers were aided, in some indirect manner, by increasing producers' income at the networks' expense, this redistribution of profits cannot be achieved without regulating substantially all terms, including the license fee, of network program supply contracts.
>
> *This allegation is often expressed in the form of a complaint that networks favor those programs in which they obtained . . . [financial interests]. Unless some policy is violated by the acquisition of these rights, however, there is no reason to fear or prohibit networks favoring programs in which they have been obtained. Thus, networks presumably favor programs for which they obtained low licence fees or which they expect to attract large audiences. One cannot urge that this favoritism be prohibited without demonstrating that public policy is violated by networks obtaining low license fees or large audiences.

195. Neither in the responses to the Final Report of the Network Inquiry Special Staff [93] nor in the responses to the present proceeding was there any significant new evidence or analysis presented to rebut the conclusions reached by the network inquiry staff. Indeed our review in the present proceeding persuades us that the earlier criticisms of the rules, in terms of their impact on network/supplier relationships, were essentially correct. In our analysis of the responses to this proceeding we have found no credible evidence that the rules have fostered the development of first-run syndicated programming or have increased the diversity or competitiveness of the program supply market. We have found no credible argument presented as to why network financial interests in programs would lead to an improper or inappropriate selection of programs for network broadcast. While it is difficult to evaluate the impact of the rules on

[84] 23 FCC 2d at 398.

[85] 23 FCC 2d at 389, 397.

[86] 23 FCC 2d at 398.

[87] 23 FCC 2d at 398.

[88] 23 FCC 2d at 397. *But see*, n. 107, *infra*.

[89] Two articles by R. W. Crandall focused directly on the rule, while work by various others suggested that the market conditions assumed by the Commission did not in fact obtain. Crandall's research suggested that when networks purchased syndication rights to programming, they paid program producers the market value of those rights. He also found that networks made their decisions on retaining series without "favoring" programs in which they retained a financial interest. Finally, Crandall found no evidence of monopsony power in the program acquisition market. See R. W. Crandall, "The Economic Effect of Television-Network Program 'Ownership' ", 14 *Journal of Law and Economics* 385–4–2 (1971) and "FCC Regulation, Monopsony, and Network Television Program Costs," 3 *Bell Journal of Economics* 483–508 (1972). Additional information on syndication markets is provided in R. G. Noll, M.J. Peck, and J. J. McGowan, *Economic Aspects of Television Regulation* (Brookings Institution: Washington, DC, 1973), pp. 63–67. They show that before the rule the networks' share in syndication profits was low, and they estimate that program producers extract approximately one-half of the "rents" associated with their product. The latter point suggests that any network monopsony power is limited. Finally, B. M. Owen, J. H. Beebe, and W. G. Manning, Jr., *Television Economics* (D.C. Health and Company: Lexington, MA, 1974), pp. 28–31 examined the program production market and found it characterized by easy entry and an ample supply of programming inputs. This suggests that whatever mix of programming is demanded will be produced, without regulatory intervention being needed.

[90] T. Schuessler, "FCC Regulation of the Network Television Program Procurement Process: An Attempt to Regulate the Laws of Economics?" 73 *Northwestern U.S.L.R.* 227 at 229 (1978).

[91] *Notice of Inquiry in Docket 21049*, 62 FCC 2d 548 (1977); *Further Notice of Inquiry in Docket 21049*, 69 FCC 2d 1524 (1978).

[92] Network Inquiry Staff Report, Vol. II, p. 793 (footnote omitted).

[93] See *Id.* at pp. 805–809 for a review of the response to the Report of the Network Inquiry Special Staff.

creative control, it is apparent that, as the principal purchasers of network programming and as licensees of stations using this programming and as responsible agents for affiliated stations that broadcast this programming, the networks have continued to maintain a significant and not improper control over the programming obtained for network exhibition.[94] Finally, we do not believe that the Commission has a proper role to play in allocating revenues or profits between the networks and those who supply programming for network use, in the absence of evidence or reason to believe that by doing so the value of the television service received by the public will be increased. Not only do we fail to find evidence that such a shift would benefit the public but it is unclear that the existing rules would cause such a shift to occur even if it were desirable. As long as program supply markets remain competitive, and it is undisputed that they were competitive before the rules were adopted and remain competitive today, the possibility of rules of this type lifting profit levels among the program suppliers and packagers above the normal competitive level is remote. To the extent the rules, by excluding efficient sources of financing from the market, create barriers to market entry or create pressures for smaller producers to join with larger firms, the rules are operating in a manner contrary to their stated purpose and serve no valid public purpose.

196. We appreciate that the market into which entertainment television programming must be sold is a concentrated one and that for some particular types of programming there historically have not been more than three significant buyers. Nevertheless, the regulations in question cannot fundamentally change the bargaining power between the parties.[95] And, while the number of purchasers is limited, competition for programming is intense and no evidence of collusive conduct among the buyers is evident.

197. In sum, the rules, as they affect relationships between the networks and the suppliers of programming, appear to fail as mechanisms to increase network or first-run syndicated program diversity and fail to foster competition in the program supply and distribution markets. Furthermore, the rules risk creating incentives for greater concentration in the supply markets and introduce possible inefficiences into the creation and distribution process which could result in reduced total investment in programming. Although there are other reasons for our decision to retain some control over network participation in the syndication of off-network series programs, which are discussed below, we no longer find any reason for limiting non-controlling or passive financial interests that the television networks may obtain in the programming they acquire for network exhibition. Further, no rationale appears to remain, given the analysis above, for any restrictions on network participation in the syndication of programming in foreign markets or for other kinds of restraints on ancillary rights which the networks may invest in and receive a return from in connection with programs they exhibit.

Network Participation in Program Syndication

198. The above discussion, relating to the regulations as they impact on the network/supplier relationship, addresses most of the concerns that moved the Commission to adopt both the financial interest and syndication rules. Another rationale for the rules, touched on only briefly when the rules were adopted,[96] but now the central focus of much of the current debate, relates to the question of whether the networks through participation in the syndication of programming could competitively damage independent television stations' operations in order to protect their affiliates and their own stations from competitive injury or otherwise cause public injury through manipulation of the syndication market.

199. The most refined argument in this regard is that presented by the Committee for Prudent Deregulation, which not only contends that growth of the independents in the last decade is a direct result of the rules, but also presents a complex theory of how repeal of the syndication rule could lead to a situation detrimental to the continued prosperity or even viability of independent stations. That so-called "warehousing" theory essentially postulates that networks would withhold certain off-network series, of a type that is normally broadcast by the independents during the 4–8:00 p.m. daypart, their most lucrative period, in order to increase the price of those programs whch are aired or advertising rates.

200. CPD's theory is based on an intricate series of assumptions, which we have already described in detail. For the reasons set forth earlier, we find it unlikely that the postulated scenario would occur. For example, the networks would have to acquire syndication rights in virtually all off-network series programming. If the networks remain competitive buyers of television programming, however, the chance of this happening is small. Nothing in the record of this proceeding suggests that this outcome is plausible. In addition, the theory requires that each network possess monopsony power or that they be able to collude and maintain a collusion. For the host of reasons discussed earlier, we conclude that it is unlikely that the networks could do so. Further, networks would have to be able to control the prices of recent off-network series without fear that buyers would switch to alternative programming. In fact, however, surveys of broadcasters indicate that older series, sports, feature films, and locally produced programs can serve to some extent as alternatives, thereby exerting a constraining influence on the price of recent off-network series. Finally, CPD's warehousing theory rests, in part, on the assumption that television advertising rates are unconstrained by other advertising media. That assumption is, at best, unproven and is becoming less viable with the increase in alternative video services. In short, each necessary assumption is questionable, and when taken together—as they must under the theory posited—the probability of warehousing occurring becomes slight.

201. It is noteworthy that this theory is concerned only with the networks' conduct as syndicators. The networks' financial interest or lack thereof plays no part in this scenario. Accordingly, since the viability of the independents is the only vestigial justification for retaining the rules, we conclude that this provides no justification for a continuation of the financial interest rule. The financial interest rule has failed to increase the independent program supply, has no effect on

[94] With respect to the issue of creative control it should be noted that, in initially proposing these regulations, the Commission stated directly that "Nothing in the proposed rule is intended or should be construed to limit or modify the overall program responsibility of licensees for all matter broadcast through their facilities." *Notice of Proposed Rulemaking in Docket 12782*, 45 FCC 2146, 2163 (1965).

[95] The logic of the observation that the rules cannot fundamentally alter the bargaining power between the parties appears to have received grudging acceptance even on the part of those who argue for continued regulation. The massive ICF, Inc. study, prepared for the Committee for Prudent Deregulation, begins by taking note, without disagreement, of the previous studies which concluded that, given the competitiveness of the supply markets, "rules governing the network relationships with suppliers are not likely to have significant economic effects *in the program supply market.*" (Emphasis in original) (paper 2, p. 1–1). *See also* oral proceeding transcript p. 204.

[96] 23 FCC 2d at 394.

program diversity or quality, has not decreased network control over program content or creativity, does not represent an inherently undesirable conflict, and appears to present no threat to the well-being of the independents.

202. We believe there is room for significantly reducing the coverage of the present rule, without jeopardizing any public interest concern. As noted above, there is no reason to exclude networks from the foreign syndication market. With respect to the domestic syndication market, we have tentatively concluded that some restrictions may be necessary because we cannot be completely certain network participation in the syndication market would not result in competitive injury to the independent television segment of the industry and thus to the viewing public. While the chances of such injury, based on the above analysis, do not appear to be large, we are entering a period in which the increasing economic strength of the non-network segment of the television industry is making the television industry significantly more competitive and increasing the programming options available to the public. It is extremely important that progress in this direction not be impeded. If the CPD scenario occurs, it is possible that networks, acting as syndicators of off-network programming would fail to support these developments as vigorously as unaffiliated syndicators. While our economic analysis suggests that this would generally not be a profit maximizing course of conduct to follow, it is nevertheless a matter of sufficient concern to warrant some continued regulatory involvement. We accordingly believe a focused restriction on network participation in the syndication of off-network prime time entertainment programming should be maintained to address the residual concerns that continue to exist in this area, as well as to provide a transition to a less regulated, while at the same time more competitive, environment.

203. The revised syndication rule, which is patterned in large part after the proposal of the Department of Justice,[97] is limited in scope. It covers only those programs and practices that could conceivably be employed to harm the independents if the activities predicted by CPD's warehousing theory were actually to take place. Thus, the rule is expressly limited in application to the three major national networks.[98] It applies only to prime time entertainment series, upon which the independents rely for off-network stripping. And it applies only to domestic distribution of these series to television broadcast stations for non-network television exhibition. Participation in the distribution of programming, other than off-network programming, is not restricted since here the potential benefits of additional competition and program sources would appear to far outweigh any potential concerns relating to increased network influence.

204. To reduce any possibility of warehousing, a network will be required, within six months of a series completing its network exhibition run, to transfer all rights in that series it may hold relating to its syndication, to an unaffiliated [99] syndicator. In addition, no later than the end of the fifth year of a network series run, the network will have to transfer all syndication rights for programs in that series to an unaffiliated syndicator. The language of the rules, as proposed is set forth in Appendix A. Our objective here is not to attempt to cover every conceivable aspect of network participation in non-network distribution but to draw a line between those interests that are reasonably necessary to participation in network broadcasting and which may lead to greater investment or efficiency and those interests that are most likely to lead to injurious activities. In disposing of all rights related to syndication, the network shall retain no active interest in the syndication of the program and shall be prohibited from imposing any conditions, terms, or restrictions over the manner by which a program is syndicated.[100] For example, the networks are forbidden to choose a syndicator on the basis of the time or day part in which the program will be broadcast, the frequency with which it is broadcast, the price that licensees will be charged, or the stations which will be broadcasting the programs. To insure that these requirements are met, the networks will be required to file, within 30 days after each sale or transfer, a notice of such sale or transfer with the Commission.[101] The network shall be required to certify, in this notice, that the sale was consistent with the requirements of the Commission's rule. It is the Commission's intent that the networks comply with the spirit and purpose as well as the letter of the rule.

205. We recognize that rules of this type are subject to various types of technical criticisms for their potential inability to address every market practice or situation that might by hypothesized as well as for their constraints on practices that are otherwise reasonable and non-threatening. Clearly, definitional and coverage issues could be resolved by simply making the regulations significantly more or less inclusive. Because there are market factors which themselves present obstacles to warehousing and create incentives that weigh against many of the anticompetitive strategies postulated, what we seek here is a narrow rule to provide only an additional measure of protection. Some have argued that the programming involved is too varied in its characteristics for a rule to trigger a sale of the syndication rights either by reference to some fixed time period (i.e., as in the five year rule) or by reference to some discretionary act by the

[97] *See* Reply Comments of Department of Justice at 30. We note that, because the antitrust consent decrees that bind the three networks are generally more restrictive than the Commission's rules, the networks will remain constrained until changes in these decrees are made. The analysis developed in this proceeding suggests that changes in them ought to be made. We do not believe, however, that the consent decrees should constrain this Commission in carrying out its own responsibilities. *Cf. Second Computer Inquiry*, 77 FCC 2d 384, 492 (1982). ("Our basic premise is that the consent decree should not constrain this Commission in the adoption of regulatory policies necessary for carrying out our mandate under the Communications Act.")

[98] The existing rules (§ 73.658(j)(4)) cover all networks that offer "an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States." The rule was intended to cover mainly the three major networks. See 25 FCC 2d at 333. The actual language of the rule, however, was more inclusive, and is therefore being revised here to be clearer in its coverage. For some of the background concerning why these revisions are considered desirable, see *Christian Broadcasting Network, Inc.*, 50 RR 2d 359 (1981).

[99] In using the term "unaffiliated" we intend a complete separation of ownership and control. Other than the passive interests that the networks may maintain, there should be no common ownership. This would not, however, preclude the transfer of syndication rights to a firm that is both a syndicator and the owner of a broadcast station distributing network programming and thus considered a network "affiliate." In general, however, we intend a strict separation of interests. *Compare, for example*, 47 CFR 64.601, note 1 (rule regulating cable TV-telephone company relationships).

[100] Passive financial interests may be retained by the networks when their active syndication rights are disposed of in accordance with the requirements of the rules. It is critical that any interests retained be passive in nature so that the rule limiting network participation in program syndication is an effective barrier to any activity that might raise "warehousing" concerns. Such passive interests have been described as comparable in nature to the interest of a limited partner in a limited partnership, the interest of a nonvoting preferred stockholder in a corporation, or a contractual interest in a residual payment, in that a financial return is received but no general management power exists. At this point, we see no need to prohibit or require the use of any particular form of interest or limit the percentage of ownership as long as such interests conform to the basic requirement that they be passive in nature and preclude network control or participation in the syndication process itself. What we do seek here is the most effective means of insuring a separation between "interest" and "control" consistent with the above described rule.

[101] This will permit the Commission to monitor the forced sales and will give the Department of Justice the opportunity to monitor the networks' behavior for any anticompetitive practices.

network (i.e., the six month rule).[102] In this regard, the rule proposed appears to us to fairly target the area of concern. The six month period specified would appear to provide adequate time for the requisite syndication arrangements to be consummated after a program has completed its network run and the five year period sets an outer bound by which rights in the more popular programs would have to be made available for syndication. In neither instance, however, do we anticipate that all or even many of the transactions required would be consummated in the "fire sale" atmosphere of the last days permitted by the rules.[103] Parties disagreeing with our view that the coverage of the rules is correct, however, are encouraged to provide constructive criticism so that if alterations are necessary they can be incorporated before the rules are finally adopted.

206. Our decisions to rescind the financial interest rule and to modify the syndication rule are based on consideration of whether each rule serves the public interest. Each has been tested against the relevant criteria of fostering diversity and competition and with a view to how the service received by the public will be affected. Altering the distribution of profits among private parties is not, and never has been, a proper or desirable function of the Commission. Thus, to characterize increased profitability of producers as a goal of the rule is to misconstrue our true objective. We agree with the Network Inquiry Special Staff when it stated: "Indeed, neither the statutory nor the constitutional mandates under which the Commission operates can fairly be construed to authorize intrusion into the program supply business solely for the purposes of enhancing the profits of suppliers." [104]

207. However, the three networks are in a posture different from that of other participants in the market because programming must pass through them to enter the off-network syndication market. Consequently, they are uniquely positioned to affect their competitor's access to the off-network prime time entertainment programs which have played a major role in enhancing the viability of independent stations. While it now appears unlikely that this special position provides the power or incentive for anticompetitive conduct that could harm independent stations, it is impossible to rule out entirely.[105] The very nature of the special position warrants a cautious Commission approach to deregulation in this area. Thus, we are adopting a revised rule that is narrowly drawn to protect against any network effort to capitalize on their special position but which will not impose significant costs in foregone market efficiency.

208. It is the potential harm to the independents which is the Commission's concern. The independent television sector of the broadcasting industry is an important video service to the public. The very significant growth in the number of independent stations in recent years has contributed greatly to making local video markets more competitive and has increased the public's viewing choices greatly. Not only have these stations provided more entertainment for the public but they have multiplied the voices speaking on issues of public importance. Because we are particularly concerned that this progress continue, we believe that the public interest would be served by retaining a modified version of the syndication rule. However, because the networks' financial interest in programs has no direct relationship to the possible warehousing strategies, we find no justification for retaining even a modified version of the financial interest rule. Our modified syndication rule expressly prevents the networks from using their financial interest to act as syndication "brokers," an original concern of ours in 1970.[106] Under our modified rule, a network's continued financial interest in off-network distribuiton of prime time entertainment series can only be a passive profit-sharing interest, without regard to or control of the terms and conditions of syndication. A network's financial interest and syndication rights are thus entirely separable. Accordingly, so are the rules.

209. Our modified syndication rule is designed to be as minimally intrusive into all the program process and as low-cost as possible, while at the same time resolving all fears of network warehousing. As our summary description of the economic context in which these rules operate, which is set forth above, indicates, there are clearly going to be significant changes taking place in the years ahead. These will result in there being more buyers of original programming, more distribution outlets, and more alternatives to either off-network or, indeed, original network programming available for broadcast station use in the years ahead. In a context in which these additional alternatives exist, the rationale for the rules will be eliminated as the warehousing scenarios become increasingly unrealistic. At that point it is appropriate that the rules themselves not continue. By 1990 we believe that this modified rule can be repealed, without any danger to the independents. By then, the independent stations will be much stronger, the networks' audience share willl be much lower, and the expanding communications marketplace will make anticompetitive activities in the syndication market significantly more difficult. Hence, unless the Commission makes a determination that the public interest warrants continuation of the syndication rule, the rule will "sunset" and cease to exist on August 4, 1990.

Comments Requested on Tentative Decision

210. Given the long history of our review of these rules we are confident that our analysis of the effect of the rules in terms of the network/supplier relationship is correct. The studies on this question are numerous. The evidence collected by the Network Inquiry Special Staff is exhaustive and the opportunities for comment on the issue have been abundant. Our conclusions with respect to the proposed revised syndication rule are less definitive, however, and we are particularly concerned that, if regulation is necessary, the mechanical aspects of whatever form of regulation is adopted be workable. For this reason we are issuing this document as a *Tentative Decision* and providing an additional opportunity for comment on it. We recognize that potential problems of application may exist that are not yet resolved or identified by the rules. We ask the commenting parties to help us identify these areas and to propose solutions. For example, we seek suggestions on the question of how to define the end of the network exhibition period. We are also, to this extent granting the petitions requesting further proceedings filed by the Office of Communication of the United Church of Christ, the Communication Commission of the National Council of the Churches of Christ in the U.S.A., Paulist Productions, and the Committee for

[102] See CPD reply comments p. 82.

[103] Particularly with respect to the five year provision of the rules, it is important to note, as a number of the commenting parties do, that "after the third year or so, if the show is still succesful and despite the original terms of the contract . . . the balance of power shifts considerably to the producer." ICF. Vol. 1, 1–16. Thus, there are market factors that will make the five year period an outer bound rather than a norm.

[104] Network Inquiry Staff Report, Vol. II, 293 at 725–31. The Special Staff found no evidence that the interests of television viewers had been furthered by the rules' effort to redistribute revenues.

[105] See Reply Comments of United States Department of Justice at 15–18 and paragraph 152 *et seq., supra.*

[106] 23 FCC 2d at 398.

Prudent Deregulation. Although parties are free, of course, to address any point they want to, our interest and focus at this point is with the syndication issues and the proposed syndication rule. A resubmission or reiteration of arguments already made will not be useful.

211. Authority for adoption of the rule proposed herein is contained in Sections 4(i), 301, 303 (b), (f), (g), (i), and (j), 307(d), 308(b), 309(a), 310, 312, 313, and 314 of the Communications Act of 1934, as amended.

212. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised the *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantial disposition of the matter is to be considerd at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comment must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1201 of the Commission's rules.

213. Pursuant to the procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before September 20, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commissison may take into consideration information and ideas not contained in the comments.

214. In accordance with the provisions of § 1.419 of the rules, formal participants shall file and original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the public who wish to express their interest by participating informally may do so by submitting 1 copy. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

For further information concerning this proceeding, contact Judith Herman or Marcia Glauberman (202) 632-6302.

(Secs. 4, 303 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Proposed Rule Amendments

Part 73 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

Section 73.658 is amended by revising paragraphs (j)(1) through (j)(4) and adding new paragraphs (j)(5) through (j)(7) to read as follows:

§ 73.658 Network syndication and program practices.

* * * * *

(j) * * *

(1) No television network shall sell, license, or distribute television prime time entertainment series programs that have previously been exhibited on a television network to television station licensees within the United States for non-network television exhibition or otherwise.

(2)(i) A televsion network shall, no later than 180 days after a network exhibition of a prime time entertainment series is completed, make that complete series available for non-network broadcast exhibition or syndication within the United States.

(ii) In addition, a televison network shall, no later than the end of the fifth year after a network exhibition of a prime time entertainment series has commenced, make all programs in that series available for non-network broadcast exhibition or syndication within the United States. On or before the anniversary of that date each year thereafter, all additional programs in the series shall be made available for non-network broadcast exhibition or syndication within the United States.

(iii) All programs shall be made available for non-network exhibition or syndication by transferring all rights held by the network that relate to syndication to an unaffiliated party that is not in any way commonly owned or controlled with the network. The terms of the transfer agreement may permit the network to receive a continuing financial return from the non-network use of such programs but shall otherwise preclude all network control or influence over the terms of license for non-network exhibition, including the specific price charged for non-network exhibition, the scheduling of the programs and the entities to whom non-network exhibition licenses are granted.

(3) Not more than thirty days following the transfer of non-network exhibition or syndication rights pursuant to the requirement of this paragraph, the network shall notify the Commission of that transfer. That notice shall contain the name of the series, identify the programs involved, identify the party to whom the non-network exhibition or syndication rights were transferred and shall certify that the terms of the transfer comply with the requirements of this paragraph. All agreements relating to such transfers shall be provided to the Commission at the Commission's request.

(4) If a network does not timely avail itself of any license or other exclusive right to network exhibition within the United States, the grantor of such license or right to network exhibition may, upon making a timely offer reasonably to compensate the network, reacquire such license or other exclusive right to exhibition of the program.

Note.—This subparagraph is essentially unchanged from the existing rule and was not the subject of this proceeding.

(5) For purposes of this paragraph and paragraph (k) of this section, the term "network" includes only the major national advertiser supported broadcast television networks (ABC, CBS, and NBC).

(6) For purposes of this paragraph a prime time entertainment series program is an entertainment program which is one of a sequence of 22 or more programs with interconnected plot or substantially the same cast of principal characters any regular espisode of which has had network exhibition during the hours of 7–11 p.m. eastern time.

(7) The provisions of paragraphs (j)(1), (2), (3), and (6) of this section shall remain in force until August 4, 1990 and shall thereafter be of no further force or effect.

Separate Statement of FCC Commissioner James H. Quello Concurring in Part and Dissenting in Part

In re: BC Docket No. 82-345 relating to network television, financial interest and syndication rules.

August 4, 1983.

I wish to make it immediately clear that the Commissioner's action in this docket does not reflect a decision on my part, tentative or otherwise, that the Commission should adopt this particular proposal. Therefore, I dissent to the characterization of this document as a tentative decision. Nevertheless, I fully concur in seeking public comment on this specific proposal.

I would like to note that in reviewing the comments I shall particularly look for guidance in determining whether a narrow rule such as the one proposed here would adequately ensure that independent television stations continue to have unencumbered access to off-network syndicated programming. Such programming is a staple source of revenue for independent stations, and as such it is an important part of their ability to provide the public with a diversity of viewpoints through their news and public affairs programming.

As I made explicit when the Commission heard oral presentations on this subject, I support the concept of a compromise where the networks are not unduly restricted from participation in any market so long as the Commission continues to protect the valid interests of the independent stations. Putting this proposal out for comment will, in my view, help the Commission focus on whether a narrow approach such as is presented here can meet that goal. My support of this action should not be interpreted as suggesting that my further consideration of these matters will be limited to the boundaries of this proposal.

Separate Statement and Partial Dissent of Commissioner Henry M. Rivera

RE: BC Docket 82-345—Network Financial Interest and Syndication Proceeding.

With the exception of the sunset provision, I support the Commission's tentative decision to narrow the existing financial interest and syndication rules. The substantial record compiled to date persuades me that the primary public interest goal furthered by present restrictions is the continued growth and vigor of the independent television stations. These stations are an integral component of the television diversity presently available to the American public; unimpeded access to lifeblood programming by the independents ensures their continued strength, thereby promoting the widest possible dissemination of ideas from diverse and antagonistic sources.[1]

At this juncture, I believe the proposed new syndication rules, with their associated structural restrictions on network financial interests and special reporting requirements, are reasonably calculated to preserve the independent stations' open and unrestrained access to necessary off-network programming. Given the serious consequences that would flow from a misstep in this complex area, however, subjecting the proposed rule revisions to the crucible of public comment is critical to a sound resolution of this proceeding. While reasonable people may differ about the magnitude of the risk posed by liberalization of the existing rules—indeed, I am not convinced that the potential for anticompetitive conduct is as slim as projected by the theoretical analysis herein—there is a substantial consensus that if such conduct does occur, the impact on the independent stations could be devastating and irreversible. Further public comment and analysis will provide a necessary extra measure of assurance that the rules we finally adopt will optimally serve their purpose.

My position on the sunset proposal is unequivocal and negative. If the Commission is committed to the continued well-being of the independents, and believes that oversight of the syndication process is necessary to assure that well-being, it is illogical to decide now based on nothing more than a "guesstimate" of future competition that such oversight will no longer be required at an arbitrary future date. The independents' lifeline should not be severed in this manner. As with any other agency rule, when the conditions that lead us to regulate in this proceeding no longer exist, the rules should then be revisited.[2]

In sum, there is considerable record evidence that the financial interest and syndication rules should be revised. However, we must be certain that the basis for a recrafted rule is well-founded and that the rules ultimately adopted will work smoothly and efficiently. I therefore await with keen interest the public's comment on this tentative decision and the draft rules so that we may responsibly conclude this proceeding.

[FR Doc. 83-22432 Filed 8-19-83; 8:45 am]

BILLING CODE 6712-01-M

[1] Since this proceeding began, much has been made about the extent to which the existing rules promote diversity in the program production market. My great concern about fostering diversity of broadcast ownership facilities is a matter of record and I am equally concerned about diversity in the program production market. However, based on the record before me, I do not believe a persuasive case has been made that these rules have promoted greater diversity in the program production market.

[2] As the Justice Department put it: "the growth of the new technologies is likely to reduce the need for a prophylactic rule at some point. [But] even the best projections can only approximate the effects of technological change on the programming marketplace [and on] the networks' position as gatekeepers in the market for syndicated programming." *See Reply Comments of the United States Department of Justice"* at 28.

---

47 CFR Part 73

[BC Docket No. 81-726; RM-3820; RM-3890; RM-3891; RM-3892; RM-4026]

FM Broadcast Stations in Celina, Clinton, Knoxville, LaFollette and Sweetwater, Tennessee; Louisville, Oneida, Radcliffe, Somerset, and Stanford, Kentucky, Hanover,[1] Madison and New Albany, Indiana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petitions for rulemaking.

SUMMARY: Action taken herein denies a petition for rule making filed by J. Bazzell Mull and Millard V. Oakley proposing Channel 282 and Channel 221A at Knoxville, Tennessee, and Radcliffe, Kentucky, respectively. Also denied are four contingent petitions for rule making for (1) Channel 221A, Madison, Indiana; (2) Channel 246, Celina, Tennessee; (3) Channel 244A, Oneida, Kentucky; and (4) a counterproposal for Channel 221A at Hanover, Indiana. The petitioners failed to demonstrate sufficient public interests reasons to require five existing stations to change their channel assignments.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Celina, Clinton, Knoxville, LaFollette and Sweetwater, Tennessee;

[1] This community has been added to the caption.

Louisville, Oneida, Radcliffe, Somerset, and Stanford, Kentucky, Hanover,[1] Madison and New Albany, Indiana) BC Docket No. 81-726, RM-3820, RM-3890, RM-3891, RM-3892, RM-4026.

Adopted: July 21, 1983.
Released: August 10, 1983.

By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making and Orders to Show Cause*, 46 FR 52145, published October 26, 1981, in response to a petition filed by J. Bazzell Mull and Millard V. Oakley ("Mull/Oakley"). Mull requested the assignment of Class C FM Channel 282 to Knoxville, Tennessee, as that community's fourth commercial FM assignment. Oakley requested the assignment of FM Channel 221A to Radcliffe, Kentucky, as that community's first local aural service. Three related petitions for rule making were also included in the *Notice:* (1) RM-3890, filed by Hoel M. Bell ("Bell") proposing the assignment of Channel 221A to Madison, Indiana, as that community's second FM assignment; (2) RM-3891, filed by David E. Goff ("Goff"), proposing the assignment of Channel 246 to Celina, Tennessee, as that community's first local aural service; and (3) RM-3892, filed by John W. Pirkle ("Pirkle"), proposing the assignment of Channel 244A to Oneida, Kentucky, as that locality's first aural service. The Oakley, Bell, Goff and Pirkle proposals are dependent upon channel changes in other communities which are necessary to adopt the Knoxville proposal.[2] All petitioners have filed comments and reply comments in support of their proposals; only Bell and Pirkle have failed to reaffirm their intention to apply for their channels, if assigned.

2. Also under consideration is a counterproposal [3] (RM-4026), filed by Charles R. Cutler, received in response to the *Notice* suggesting that Channel 221A be assigned to Hanover, Indiana, rather than to Madison, Indiana, as proposed. The proposal for Hanover, Indiana, is also dependent upon a substitution for Channel 220 at Louisville, Kentucky.

3. Also under consideration is a request by Louisville Free Library ("Louisville") in response to an *Order to Show Cause* [4] for a hearing on the proposed modification of its license specify Channel 201 in lieu of Channel 220 for Station WFPK (FM), Louisville. Although their licenses were not proposed to be modified, South Central Broadcasting Corporation ("South Central"), licensee of FM Station WEZK, Knoxville, Tennessee, and McGraw-Hill Broadcasting Company, Inc. ("McGraw-Hill"), licensee of TV Station WRTV (Channel 6), Indianapolis, Indiana, have also requested a hearing as an alternative to granting the proposed substitution of Channel 201 for Channel 220 at Louisville, Kentucky.

4. In response to the *Notice*, comments in opposition to the Knoxville and related proposals were filed by: Ray Mullinix ("Mullinix"), licensee of AM Station WKYR, Burkesville, Kentucky; Primo Communications, Inc. ("Primo"), previously a competing applicant for Channel 285A at LaFollette, Tennessee; LaFollette Broadcasters, Inc., ("LaFollette"), permittee of Channel 285A at LaFollette Tenneseee; Owensboro Broadcasting Company ("Owensboro"), licensee of Station WBKR (FM), Owensboro, Kentucky; FT. Knox Broadcasting Company ("Ft. Knox"), licensee of Stations WSAC (AM) and WWKK (FM), FT. Knox, Kentucky; South Central Broadcasting Corporation, licensee of Station WEZK (FM), Knoxville, Tennessee; Louisville Free Public Library, liicensee of Station WFPK (FM), Louisville, Kentucky; and McGraw-Hill Broadcasting Company, Inc., licensee of Station WRTV (TV), Indianapolis, Indiana. Reply comments were filed by South Central, Louisville, and McGraw-hill.

Background

5. Mull/Oakly initiated this proceeding by proposing the assignments of Channel 282 at Knoxville, Tennessee, and Channel 221A at Radcliff, Kentucky. The Knoxville assignment for Channel 282 is the primary proposal in this proceeding because of the other assignments (Radcliff and those filed subsequently) depend upon Channel changes required by the adoption of the Knoxville proposal. The Commission previously considered a similar proposal to assign Channel 282 to Knoxville by a substitution of channels at LaFollette in Docket No. 21211.[5] In that proceeding the Commission was faced with conflicting proposal for Channel 285A at Knoxville and Channel 285A at LaFollette. The Knoxville proponents sought to resolve the conflict through the substitution of Channel 244A for 285A at Lafollette which woud have permitted both communities to have a new assignment. The Commission in that case (see footnote 5): (1) granted the conflicitng proposal for Channel 285A at LaFollette; (2) denied the proposal for Channel 282 at Knoxville; and (3) rejected the proposed substitution of Channel 244A at LaFollette because the spacing requirements of Section of 73.207 would have necessitated a transmitter site location approximately 7 to 8 miles southeast of LaFollette. The engineering studies indicated that city grade coverage could not be provided to LaFollette from the possible sites. Mull, although not a proponent in Docket No. 21211, filed a petition for reconsideration seeking reversal of the Commission's decision denying the proposal to assign Channel 282 to Knoxville. The Commission in denying reconsideration of its *Order* (see footnote 5), commented that one of several options available to further proponents of a knoxville assignment, migth be a "search" for another channel. According to Mull/Oakly" (t)he present petition is the result of the suggested 'search' " to find another FM channel to assign to Knoxville. It is clear, however, that Mull has not found another channel but has presented a different proposal to substitute channel 244A for Channel 285A at LaFollette, Tennessee, which will permit the assingment of Channel 282 at Knoxville. As the *Notice* (p. 6) in this proceeding points out " (t)he Mull/Oakly proposal is, in effect, a plan designed to overcome the obstacles

[1] The Oakley and Bell proposals are short-spaced to Channel 220 at Louisville, Kentucky, and depend upon a channel substitution proposed by Mull for that community. The Goff and Pirkle proposals are short-spaced to Channel 244A at Somerset, Kentucky, and depend upon a channel substitution proposed by Mull for that community.

[2] The counterproposal was filed on December 15, 1981, and was given *Public Notice* on January 8, 1982, Report No. 1327

[3] The *Notice* proposed to modify six licenses to specify frequency changes to implement the Knoxville proposal and issued *Orders to Show Cause* to:

(1) Clinton Broadcasters, Inc., licensee of than Station WYSH-FM, Clinton, Tennessee (the station has since changed ownership and is now called Station WNKX);

(2) Sweetwater Radio, Inc., licensee of Station WDEH (FM), Sweetwater, Tennessee;

(3) First Radio, Inc., licensee of Station WSEK FM), Somerset, Kentucky;

(4) Lincoln Garrard Broadcasting, Inc., licensee of Station WRSL-FM Stanford, Kentucky.

(5) Louisville Free Public Library, licensee of Station WFPK (FM), Louisville, Kentucky; and

(6) New Albany-Floyd County Consolidated School Corporation, licensee of Station WNAS (FM), New Albany, Indiana.

In addition, the three competing applicants for Channel 285A at LaFollete, Tennessee, were served with the *Notice*. A construction permit was subsequently issued to LaFollette Broadcasters, Inc. for FM Station WQLA. Further, subsequent to the issuance of the *Orders*, a Commission study determined that the proposed modification of licenses for station WYSH-FM, Clinton, Tennessee, and Station WDEH-FM, Sweetwater, Tennessee were not required.

[5] See *Report and Order* in Docket No. 21211, 45 R.R. 2d 1577 (1979), *recons. denied*, 47 R.R. 2d 1063 (1980).

found in Docket No. 21211 to the use of Channel 244A at Lafollette."

The Mull/Oakley Plan

6. The Mull/Oakley plan is designed primarily to eliminate short-spacing problems for the Channel 282 assignment at Knoxville, Tennessee, through the utilization of the Channel 244A at LaFollette, Tennessee. Mull's proposal, however, is also short-spaced to existing assignments at Waynesville, North Carolina (Channel 285A); Athens, Alabama (Channel 282); and Gallatine, Tennessee (Channel 283). Mull proposes to comply with the minimum distance separation requirements of § 73.207(a) by restricting the Knoxville transmitter site to a location approximately 14.7 miles north of Knoxville and by substituting Channel 244A for Channel 285A at LaFollette, Tennessee. The channel substitution at LaFollette, would in turn start a series of channel substitutions; as follows:

TABLE I

Call sign	Location	Current channel	Proposed channel	Eliminates short spacing to:
WOLA(FM)	LaFollette, Tennessee	285A	244A	Channel 282 at Knoxville.
WSEK(FM)	Somerset, Kentucky	244A	240A	Channel 244A at LaFollette.
WRSL(FM)	Stanford, Kentucky	240A	221A	Channel 240A at Somerset.
WFPK(FM)	Louisville, Kentucky	[1]220	[1]201	Channel 221A at Stanford.
WNAS(FM)	New Albany, Indiana	[1]201	[1]219	Channel [1]201 at Louisville.

[1] Reserved noncommercial FM channels.

7. Initially, the Mull/Oakley plan requires that all of the proposed channel substitutions listed in Table I be adopted to eliminate shortspacing problems inherent in each proposed channel change. Only after adopting the changes in Table I do the proposed new assignments in Table II become feasible. Mull/Oakley and the other petitioners have proposed the following new assignments which would be made possible by the channel changes in Table I:

TABLE II

Location	Rule making	Proposed channel	Made possible by channel change:
Knoxville, Tennessee	RM-3820	282	244A for Channel 285A at LaFollette, Tennessee.
Radcliff, Kentucky	RM-3820	221A	[1]201 for Channel [1]220 at Louisville, Kentucky.
Madison Indiana[2]	RM-3890	221A	[1]201 for Channel [1]220 at Louisville, Kentucky.
Celina, Tennessee	RM-3891	246	240A for Channel 244A at Somerset, Kentucky.
Oneida, Kentucky	RM-3892	244A	240A for Channel 244A at Somerset, Kentucky.

[1] Reserved noncommercial FM Channels.
[2] RM-4026, counterproposal for Hanover, Indiana, also made possible by channel change at Louisville, Kentucky.

Issues

8. Mull/Oakley and other petitioners in this proceeding are proposing five new channel assignments at five communities based upon five channel changes to existing stations over a wide geographic area in the states of Tennessee, Kentucky and Indiana. Initially, the multiple channel substitutions proposed were of concern to the Commission because of the "serious question" raised as to whether the multiple channel changes necessary to implement the proposals served the public interest. Citing *Broadcast Good Music! Committee*[4] which involved, in part, the denial of a proposal based upon multiple channel changes, the Commission imposed a "heavy burden" upon petitioners to demonstrate that the "overwhelming public interest consideration" found lacking in that case was present in their proposals. Petitioners were also requested to supply a variety of comments on their specific proposals relating to: Preclusive impact, alternate channel availability, first FM or first aural service, ability to provide city grade coverage, willingness to move to a new transmitter site, and "community" status definition criteria. Petitioners have responded to the issues raised by the *Notice* but commenting parties in opposition have raised an additional issue relating to the feasibility of the proposed channel change at Louisville, Kentucky, *vis-a-vis* potential interference to nearby TV Channel 6 reception. Additionally, we must consider the impact of the recently adopted proposals in BC Docket No. 80-90[3] which has modified the FM technical rules to make available hundreds of new FM channels throughout the United States. The *Notice* in this proceeding specifically solicited comments on the proposed impact and most petitioners have expressed their views. However, we shall consider comments on the instant proposals.

Comments

9. Comments and reply comments have advanced a diverse set of arguments for and against the complex set of proposals primarily relating to the "public interest" aspects of the multiple channel changes and to the merits of individual proposals. McGraw-Hill, Louisville and South Central[5] have raised an additional issue relating to Mull/Oakley's proposed channel substitution at Louisville, Kentucky (Channel 201 for Channel 220). Commenters allege that the proposed substitution: (1) Would result in new adjacent channel interference to nearby TV Channel 6 reception; (2) would cause a decrease in the service provided by the noncommercial educational FM station currently operating on Channel 220; and (3) would be contrary to the public interest in view of the Commission's actions in Docket 20735 proposing new rules and engineering standards to protect TV Channel 6 reception from potential interference by noncommercial educational FM stations. Therefore, comenters request that the channel substitution proposed for Louisville be denied. Commenters have raised a critical issue since the Louisville proposal is inextricably tied

---

[4] *Broadcast Good Music! Committee*, 49 F.C.C. 2d 1270 (1974), *recons. denied* 55 F.C.C. 2d 62 (1975), wherein the Commission denied a proposal to assign Channel 300 to Atlanta, Georgia. The Commission held that in order to make the assignment it would have been necessary to change the assignments of seven other communities, each of which was occupied by an operating station. At that time, the proposal was thought of as an unprecedented reshuffling of FM stations, the sort which the Commission avoided in establishing the FM Table of Assignments. The Commission stated that no sound reason had been advanced why such an action should be taken and from which "we must refrain in the absence of overwhelming public interest consideration. Indeed, if anything, the public interest strongly militates against the changes of channel assignments of six operating stations scattered over a wide geographical area to make a single channel assignment to a city which has a sufficient amount of FM service and an abundance of aural service generally."

[3] 48 FR 29486, published June 27, 1983.

[5] "McGraw-Hill" (McGraw-Hill Broadcasting Company, Inc.); "Louisville" (Louisville Free Public Library); and "South Central" (South Central Broadcasting Company.

to the proposed new assignments, including the one proposed for Knoxville. We will, therefore, resolve the Louisville channel substitution proposal before considering the other issues in this proceeding.

Potential Interference

10. Potential interference to TV Channel 6 reception by noncommercial educational FM stations has been a long and continuing problem which the Commission currently has under consideration in Docket 20735.[9] In that proceeding, the Commission is: (1) Proposing new rules and engineering standards for noncommercial educational FM stations which would limit the interference to TV Channel 6 reception; and (2) requesting comments on the need for an assignment table for those stations. In the interim, we must decide problems of potential interference on the facts made available on a case-by-case basis. It is therefore, important to understand the general potential interference and the Commission's policies before considering the merits of commenters' objections to the Louisville channel substitution.

11. The spectrum between 88 MHz and 108 MHz is allocated to FM broadcasting and of this, the lower 4 MHz, 88–92 MHz (Channels 201–220) is reserved for noncommercial educational FM broadcasting. This spectrum is immediately adjacent to TV Channel 6 (82–88 MHz) [10] so that the potential exists for inter-service interference. As a practical matter, the comparatively narrow bandwidth (.2 MHz) used in FM broadcasting, coupled with the high selectivity of FM receivers, effectively precludes TV–FM interference. The reverse is not true, however, since the bandwidth (6 MHz) used in TV broadcasting, coupled with our policy of not assigning adjacent TV channels in the same area, has resulted in the development of TV receivers with inadequate adjacent channel selectivity. The selectivity of the TV receiver varies as a function of frequency and while the interference potential exists for most of the reserved band, the susceptibility of the TV receiver to interference is greatest (and the selectivity least) as the FM frequencies approach the lower end of the band. The amount of interference resulting is fundamentally dependent upon two factors: (1) The selectivity of the TV receiver; and (2) the signal strength ratio (at the TV receiver) between the TV and FM signal.[11] Since Channel 201 (88.1 MHz) is the lowest in the reserved band [12] and is immediately adjacent to TV Channel 6 (82–88 MHz) in the spectrum, the use of that channel has the greatest potential for interference. Accordingly, as noncommercial educational FM broadcasting has developed in the lower portion of the band, interference caused to the reception of TV Channel 6 has also increased.

12. With the exception of § 73.509,[13] the Commission's Rules do not recognize the problem of potential interference and there is presently no restriction on the location or on the facilities of a noncommercial educational FM Station with a view toward protecting the reception of TV Channel 6. Until recently, the Commission's policies have focused on limiting potential FM–TV interference by (1) attempting to develop credible prediction methods [14] to eliminating or avoid potential interference; (2) endeavoring to abstain from allocating noncommercial FM frequencies at the lower end of the reserved band; and (3) reserving commercial FM channels for noncommercial use.[15]

13. As noted previously, the Commission must decide problems of potential interference on a case-by-case basis from the facts made available in the rule making process and supporting engineering studies performed by the Commission's own staff. The method currently used to determine the undesired-to-desired (FM–TV) signal strength ratios that cause interference to TV Channel 6 reception was developed from research performed by the Office of the Chief Scientist, F.C.C., in September 1979 and is contained in *FCC/OST Lab Report No. 79–01.*[16] This report documents the methodology and represents a credible interference prediction method which is currently being used in Docket 20735 to develop new engineering standards and to propose new rules for the protection of TV Channel 6 stations from potential interference by noncommercial, educational FM stations. The Commission also has in the experimental stage, a special computer program [17] which may be used in the future to evaluate "effective interference" by noncommercial educational FM stations located at different distances from a Channel 6 TV station.

Channel 201 Proposal

14. Mull/Oakley have proposed substituting Channel 201 for Channel 220 at Louisville in order to implement their proposal for Channel 282 at Knoxville. Louisville Free Public Library currently operates Station WFPK(FM) on Channel 220 (91.9 MHz) with 100,000 watts power and antenna height of 235 feet. Mull/Oakley proposes to change the frequency of Station WFPK(FM) from 91.9 MHz to 88.1 MHz (Channel 201) retaining its authorized power and antenna height. Under the Mull/Oakley plan, the Channel 201 substitution is the fourth in a chain of five which are necessary to overcome "short-spacing" problems. Louisville is located approximately 107 miles southeast of Indianapolis, Indiana. The Station WFPK(FM) transmitter site is located approximately 51.6 miles from the Grade B contour of TV Channel 6, Station WRTV, Indianapolis, Indiana.

---

[9] See *Notice of Proposed Rule Making* in Docket 20735, 47 FR 16973, published April 23, 1976; *Further Notice of Proposed Rule Making*, 43 FR 27682, published June 26, 1978; and *Second Further Notice of Proposed Rule Making*, 47 FR 24144, published June 3, 1982.

[10] We are referring to channels which are adjacent in terms of frequency—not channel number. Channel 3 (60–66 MHz) and 4 (66–72 MHz) are adjacent to each other in both frequency and channel number, while Channel 6 (82–88 MHz) and Channel 7 (174–180 MHz) are adjacent in channel number only.

[11] The signal strengths of the TV and FM stations are functions of effective radiated power (ERP), antenna height, and distance and may be predicted using appropriate propagation curves in *FCC/OCE Report No. R–6602 (Development of VHF and UHF Propagation Curves for TV and FM Broadcasting)*, September 7, 1966.

[12] See *Second Report and Order in Docket No. 20735*, 69 F.C.C. 2d 240 (1978); 44 R.R. 2d 235 (1978), wherein the Commission directed existing Class D, 10 watt noncommercial educational FM stations to either increase their power to a minimum of 100 watts or relocate to another channel including the newly established "Channel 200" at 87.9 MHz to be used only in certain geographic areas by Class D, 10 watt stations which could not find suitable spots on other FM channels.

[13] See § 73.509 of the Commission's Rules which set forth the signal ratios that are permissible when a noncommercial educational FM station operates on Channel 200.

[14] See *FCC/OCE Report No. R–6602*, September 7, 1966; *Policy to Govern Changes in FM Channels to Avoid Interference to TV Reception*, 6 R.R. 2d 672 (1966); *FCC/OCE Report No. 6702 (Calculations for Educational FM Channel Assignments in Areas Served by TV Channel 6)*, July 14, 1967; *FM Interference to TV Reception*, F.C.C. 67–1012, *Public Notice*, released September 1, 1967; *FCC/OST Lab Report No. 79–01 (Tests of TV Receivers for "Just Perceptible" Interference to TV Channel 6 from Educational FM Signals)*, September 1979; and *Second Further Notice of Proposed Rule Making*, Docket 20735, 47 FR 24144, published June 3, 1982.

[15] See, *e.g., Presque Isle, Maine*, 36 R.R. 2d 840 (1976); *Muncie, Indiana*, 59 F.C.C. 2d 778 (1976); *Bloomington, Indiana*, 17 R.R. 2d 1665 (1969); and *Waco, Texas*, 11 R.R. 2d 1857 (1967).

[16] This report describes the methodology and the resultant data of studies involving 45 television receivers approximating the capability of an average TV receiver to reject unwanted FM signals when tuned to TV Channel 6.

[17] This information is contained in a report entitled *"A Computer Program for TV Interference" FCC/OST Computer Program TVINT*. As soon as internal approval is given, a copy of this report will be placed in Docket 20735.

Channel 201 Objections

15. McGraw-Hill, the licensee of Television Station WRTV, Channel 6, Indianapolis, asserts that "operation by educational FM Station WFPK, on Channel 201 [with its present power and antenna height] would result in new adjacent channel interference to reception of WRTV in an area of 375 square miles contaning more than 21,000 persons inside the WRTV grade B contour * * *." In support of this contention, McGraw-Hill submitted an engineering statement based on studies developed in *FCC/OST Lab Report No. 79-01,* September 1979, and supported by other interference prediction methods. McGraw-Hill points out that in a recent case,[18] the U.S. court of Appeals for the D.C. Circuit vacated and remanded a Commission *Order* which granted an educational FM application alleged to cause potential interference to TV Channel 6 reception. Among other issues, the Court held that the potential interference predictions [19] were based on "credible theoretical calculations" and remanded the case so that a public interest determination could be made by balancing the Channel 6 interference potential against any public interest factors favoring a grant of the FM proposal. Therefore, McGraw-Hill argues that the predicted FM interference in this proposal is a relevant public interest factor which should be given substantial weight in determining whether a grant of the Louisville channel substitution proposal would serve the public interest. It concludes that the proposed operation of Station WFPK(FM) on Channel 201 (88.1 MHz), with its present authorized power and antenna, constitutes a modification of its license for Station WRTV(TV) under § 316(a) of the Act for which it would be entitled to a hearing.

16. In reply Mull/Oakley argue that "the clamied interference is not as likely to occur as McGraw-Hill asserts because the transmitter site of Station WFPK(FM) is nearly 52 miles from the WRTV(TV) Grade B contour . . . " and "does not take into account geographical obstructions which do occur [sic] between WFPK(FM)'s transmitter site and WRTV's Grade B contour." Further, they contend that McGraw-Hill's assertions "totally ignore the effects of directivity in receiving antennas and the significance of these effects on the mechanism of potential interference involved in this matter."

17. In response, McGraw-Hill argues that "[d]ue to irregularities found to exist in the proposed 'terrain roughness' factor, the Commission indefinitely held up the use of such a factor in the prediction of signal coverage." Further, while " 'Mull' suggests that 'geographical obstructions' will limit the interference predicted by McGraw-Hill, 'Mull' does not identify any path obstruction. Examination of the path between WFPK and the WRTV Grade B contour area of concern shows no unusual or significant obstructions." With respect to the "effects of directivity in receiving antennas" McGraw-Hill asserts that there are so many "variables" [20] altering this characteristic that the "F.C.C. rules do not include a 'directional receiving antenna' factor in the method used to determine interference." In conclusion, McGraw-Hill asserts that neither of Mull's points are valid and that "there is no accepted basis for their inclusion in the methods used to determine interference between two stations."

18. Louisville, licensee of Station WFPK(FM), Channel 220, Louisville, Kentucky, opposes the Mull/Oakley proposal and has filed a separate formal pleading pursuant to § 316(a) of the Communications Act, as amended, requesting a hearing on the proposed modification of its license to change its channel to Channel 201. Louisville argues that since "interference has been caused by FM stations operating on Channel 201 to Television Stations operating on Channel 6," that operation on Channel 201 will "require a decrease in the Station's licensed facilities." Louisville contends that "at the very least it should be permitted to operate with contours at least equal to those presently provided by operation on Channel 220. To do otherwise would be an unconscionable hardship clearly contrary to the public interest." Louisville argues further, that in view of the Commission's proposal for new engineering standards in Docket 20735 that if "[t]he Commission, at this time were to order WFPK to change to Channel 201 it would be doing so without the knowledge of what interference, if any, WFPK would be causing to WRTV * * *." Mull/Oakley did not respond directly to Louisville's allegations merely responding that Louisville's concerns "reveal no real impediment to petitioners' proposal."

19. South Central, the licensee of Station WEZK(FM), Knoxville, Tennessee, argues that in view of the Commission's actions in Docket 20735 proposing new rules and engineering standards to protect TV Channel 6 from potential interference by noncommercial educational FM stations, that it would be "not only contrary to the public interest but a rash, almost contemptuous action to adopt a proposal putting a 100 kW station at Louisville on Ch. 201." South Central contends that the Mull/Oakley proposal to reassign Station WFPK(FM) to Channel 201 (88.1 MHz) must be viewed in the light of the continuing problem of potential interference from educational FM stations at the lower end of the reserved band to the reception of nearby TV Channel 6 stations. It points out that "[t]his has been one of the chief issues in the overall rule making proceeding concerning educational FM stations begun in 1976, Docket 20735." Further, it asserts that under the strict operating criteria adopted by the Commission in Docket 20735 [21], a Class D, 10-watt educational FM station on "Channel 200" would not be permitted at Louisville (See also § 73.503 of the Rules, Figure 1, Map). They conclude that if a 10-watt educational station on "Channel 200" is regared as a "potential source of interference" and is not permitted under existing Commission Rules [22], Station WFPK(FM) operating with its present power of 100,000 watts on Channel 201 (0.2 MHz away) must be similarly viewed. Mull/Oakley responded by stating that South Central's" * * * allegations have

[18] See, *McGraw-Hill Broadcasting Company v. Federal Communications Commission* (Case No. 78-1895, D.C. Circuit, filed October 27, 1981), 50 R.R. 2d 740 (1981). This case involved allegations of potential FM interference from a noncommercial educational FM station to the reception of McGraw-Hill's TV Channel 6 operations affecting approximately 4,500 persons. The Court held: (1) That McGraw-Hill's interference predictions were "credible" and that it should not have been required to make a post-grant showing of the actual interference which resulted from the FM proposal; (2) that reliance on the Commission's 1967 *Public Notice* and the installation of filters on individual television receivers to resolve this type of interference was not appropriate because of the absense of record evidence regarding "the efficacy" of these corrective measures; and (3) that consideration should have been given to McGraw-Hill's alternative FM proposal [which would have allowed the FM station to meet its service objectives without causing Channel 6 interference]. According to the Court, the interference allegations should be viewed in a favorable light in considering whether the FM application was grantable on the basis of written submissions. If such an examination raised a question as to whether a grant application would serve the public interest, the Court stated that a full adjudicatory hearing on the disputed factual issues should be held.

[19] The interference predictions were the result of the methodology contained in *FCC/OST Lab Report No. 79-01, September 1979.*

[20] Antenna orientation, deterioration of all components, loose elements, connections, antenna tilt, bad feed lines, adjacency to other objects, all contribute to unreliability and inability to maintain original performance specifications.

[21] See footnote 11, *supra.*

[22] See § 73.509 of the *Rules and Regulations.*

already been met * * *" in responding to McGraw-Hill's assertions.

Discussion of Potential Interference

20. Mull/Oakley has proposed changing the frequency of Station WFPK(FM), Louisville, from 91.9 MHz (Channel 220) to 88.1 MHz (Channel 201) at the lower end of the reserved band to accommodate their proposal for Channel 282 at Knoxville. As evidenced by their reply comments, Mull/Oakley is cognizant of the general problem of potential interference that could be created to nearby TV Channel 6 stations from noncommercial educational FM stations operating at the lower end of the reserved band. In this regard, it notes that the problem is being considered currently by the Commission in Docket 20735. As to the specific problem involved here, Mull/Oakley states that the claimed interference is not as likely to occur as McGraw-Hill asserts and that Louisville's concerns reveal no real impediment to petitioner's proposal. In view of the vigorous objections that have been raised, Mull/Oakley, as the proponent, would have the burden of demonstrating through objective criteria or credible prediction methods that the operation of Station WFPK(FM) with present authorized facilities would not result in harmful interference to nearby TV Channel 6 reception. A review of Mull/Oakely's engineering statement fails to support their contention that the claimed interference is not likely to occur. Mull/Oakley has also failed to address Lousville's concern that changing frequencies will also require a "decrease" in their authorized facilities nor has it presented any objective criteria or provided any material facts supported by "credible" prediction methods which would demonstrate that Station WFPK(FM)'s operation on Channel 201 (88.1 MHz) with its present power and antenna height would not result in harmful interference to nearby TV Channel 6 reception.

21. On the other hand, McGraw-Hill has submitted an engineering statement using "credible theoretical calculations" [23] which predict that Station WFPK (FM) operating on Channel 201 with its present antenna height and power would create new adjacent channel interference "in an area of 375 square miles containing more than 21,000 persons" inside Station WRTV's protected Grade B contour. They have also rebutted Mull/Oakley contentions that the interference is not as "likely" to occur because it is at the edge of Station WRTV's protected Grade B contours and, it does not take into its calculations such factors as "terrain roughness," "geographical obstructions" and "the effects of directivity in receiving antennas." Louisville, the party directly affected by the proposed channel change, has also vigorously objected, asserting that they will be required to operate with a *"decrease"* in their "licensed facilities" on Channel 201 to eliminate the potential interference to nearby TV Channel 6 reception. The Commission's own technical staff studies [24] support Louisville's assertions that they would have to reduce power at present antenna height on Channel 201 to eliminate potential interference to Station WRTV's reception within its Grade B contour. Further, both McGraw-Hill and Louisville have requested a hearing pursuant to Section 316(a) of the Communications Act of 1934, as amended, to resolve issues relating to the proposed modification of their licenses due to this problem of potential interference.

22. South Central has also raised some cogent arguments on the feasibility of the proposed channel change in light of the continuing problem of potential interference from noncommercial educational stations at the lower end of the reserved band to the reception of nearby TV Channel 6 stations. Citing the Commission's actions in Docket 20735, South Central correctly points out that this interference "has been one of the chief issues" in that proceeding. Indeed, the Commission has proposed to establish operating standards for noncommercial educational FM stations to eliminate this type of interference which reflect the Commission's longstanding policies in abstaining from allocating noncommercial FM channels at the lower end of the reserved band where nearby Channel 6 stations exist and in reserving commercial FM channels for noncommercial use to avoid this interference situation.[25]

23. In sum, on the basis of the facts before us, it appears that Mull/Oakley have failed to sustain their burden by demonstrating through objective criteria or other credible prediction methods that the complained interference to WRTV TV Channel 6 reception will not occur as alleged. The arguments against this proposal have been most compelling. The Commission's own actions in Docket 20735 and its own staff study of the instant proposal are supportive of petitioner's allegations. The Commission's long history of developing credible prediction methods also supports its efforts to avoid or eliminate this type of substandard assignment in view of the predicted potential interference. Further, in view of the Commission's own proposals in Docket 20735 to establish operating standards for noncommercial, educational FM stations which will eliminate this type of interference, it would not be in the public interest to order a station to move to a channel (Channel 201) at the lower end of the reserved band which has the known potential for causing interference to nearby TV Channel 6 reception without knowledge of what the operating parameters might be.

24. There remains only the question of whether the Commission should order Station WFPK (FM) to make the channel substitution with reduced power and/or antenna height to accommodate the Mull/Oakley proposal for Channel 282 at Knoxville. First, if the Commission proposed to order the channel change, Louisville would be entitled to a hearing on the proposed modification of its license (requiring frequency change, power and/or antenna reduction) and further resolution of whether the potential interference issue "constitutes an additional or independent ground for denial of the proposed assignment of Channel 282 to Knoxville, Tennessee." [26] We are, therefore, precluded from changing WFPK (FM)'s assigned frequency and reducing its authorized operating facilities without a hearing. The issue then becomes whether it would be in the public interest to require an existing noncommercial educational FM station to move to a substandard assignment by substantially reducing its existing operating facilities, its existing service area and its established listening patterns/audience to accommodate a fourth commercial FM frequency in another community. Such action is clearly unprecedented and, in our opinion, a better option exists.

25. In a recent proceeding (BC Docket 80-90) the Commission modified the FM technical rules to make more commercial FM broadcast assignments available in hundreds of new communities throughout the United States. In commenting specifically on the impact, petitioners in this proceeding, both proponents and

[23] See footnote 17 and 18, *supra*.

[24] Based on the methodology contained in *FCC/OST Lab Report No. 79-01, September, 1979* and the proposals contained in Docket 20735. Station WFPK (FM) operating on Channel 201 would have to reduce power from 100,000 watts to 300 watts at present antenna height to eliminate objectional interference to TV Channel 6 reception within WRTV's Grade B contour.

[25] See *Muncie, Indiana, supra* at footnote 15.

[26] Issue No. 5 in Louisville's formal petition for hearing on the proposed modification of license.

opponents, concur that if the proposals in BC Docket No. 80–90 were adopted, all five communities considered herein could receive FM assignments without the substitution of existing frequencies as rejected above. We have performed our own search and have concluded that each community could be accommodated with new assignments as indicated:

Knoxville—Channel 282C2 (3.6 miles south site restriction)
Madison—Channel 282A Mutually exclusive
Hanover—Channel 282A Mutually exclusive
Radcliff—Channel 278A
Celina—Channel 246A
Oneida—Channel 259A

We therefore urge petitioners to follow closely the Commission's actions in the near future in which we propose to implement the new rules adopted in BC Docket No. 80–90 by instituting a signle omnibus rule making to amend the FM Table of Assignments with approximately 500 new allotments.[27] We intend to include the above listed cities in the omnibus rule-making as a more desirable approach to resolve this proceeding. Thereby multiple channel changes with reimbursements and the hearings requested can be avoided. Therefore, we will not pursue the proposal either by ordering a hearing on the matter or by any other step looking toward substituting Channel 201 for Channel 220 at Louisville. Further, since the Louisville proposal is inextricably tied together with all proposed frequency changes and new assignments, we must also deny each proposed channel change, each proposed new assignment and the pending counterproposal.

26. Accordingly, it is ordered, That the petition for rule making (RM–3820), filed by J. Bazzell Mull and Millard V. Oakley proposing the assignment of FM Channel 282 to Knoxville, Tennessee, and FM Channel 221A to Radcliff, Kentucky, is denied.

27. It is further ordered, That the petition for rule making (RM–3890), filed by Joel M. Bell, proposing the assignment of Channel 221A to Madison, Indiana, is denied.

28. It is further ordered, That the petition for rule making (RM–3891), filed By David E. Goff, proposing the assignment of Channel 246 to Celina, Tennessee, is denied.

29. It is further ordered, That the petition for rule making (RM–3892), filed by John M. Pirkle, proposing the assignment of Channel 244A to Oneida, Kentucky, is denied.

30. It is further ordered, That the petition for rule making (RM–4026), filed by Charles N. Cutler, proposing the assignment of Channel 221A to Hanover, Indiana, is denied.

31. It is further ordered, That the *Orders to Show Cause* issued by the *Notice* are dismissed.

32. It is further ordered, That the request of Louisville Free Public Library for a hearing pursuant to § 1.87 of the Commission's Rules, is dismissed.

33. It is further ordered, That this proceeding is terminated.

34. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-22435 Filed 8-19-83; 8:45 am]

BILLING CODE 6712-01-M

[27] A similar approach was taken when the Commission initially adopted the Table of Assignments in 1963. The new allotments will be proposed in communities found on the "needs" list compiled for the Region 2 Conference on AM Broadcasting, and will be alloted in consonance with the Commission's Section 307(b) objectives for the FM service: (1) to provide a first full time aural service; (2) to provide a second full time aural service, or a first local service; and (3) to fulfill other public interest objectives. *Second Report and Order*, BC Docket No. 80–130, 90 F.C.C. 2d 88 (1983).

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 394 (Sub-No. 1)]

Cost Ratio for Recyclables—1983 Determination; Extension of Comment Period

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing replies to notice of proposed rulemaking.

SUMMARY: At 48 FR 29925, June 29, 1983, as extended at 48 FR 33328, July 21, 1983, the Commission proposed rules to change the maximum revenue/variable cost ratios for rates on nonferrous recyclables or recycled materials from 146 percent to 152 percent or some other figure based on more current data.

The petitioning railroads have requested that the time for filing replies be extended from August 15, 1983, to August 29, 1983. The extension is necessary to develop and present evidence. The extension is granted.

DATES: Replies in this proceeding are now due on or before August 29, 1983.

ADDRESS: An original and 10 copies should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Lillie Johnson, (202) 275–6787.
William T. Bono, (202) 275–7354.

Decided: August 11, 1983.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-22921 Filed 8-19-83; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 48, No. 163
Monday, August 22, 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

Soil Conservation Service

Roy East Sub-watershed, Rock Creek Watershed, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley N. Hobson, State Conservationist, Room 345, 304 North 8th Street, Boise, Idaho 83720, telephone 208–334–1601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Roy East Sub-watershed, Rock Creek Watershed, Power County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this action.

The project concerns a plan for land treatment to maintain or increase agricultural production, to reduce sediment damage, to improve water quality and to protect the quality of the land resource. The planned works of improvement include conservation practices such as conservation tillage systems, permanent vegetation, and terraces.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: August 11, 1983.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Thomas H. Wehri,

Acting State Conservationist.

[FR Doc. 83-23021 Filed 8-19-83; 8:45 am]

BILLING CODE 3410-16-M

Winters Creek Watershed, Nebraska; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Winters Creek Watershed project, Sioux and Scotts Bluff Counties, Nebraska, effective on July 27, 1983.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, State Conservationist, Soil Conservation Service, Federal Building, Room 345, 100 Centennial Mall N., Box 82502, Lincoln, NE 68501, 402/471–5302.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 5, 1983.

Sherman L. Lewis,

State Conservationist.

[FR Doc. 83-23012 Filed 8-19-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended August 12, 1983

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Aug. 8, 1983	41636	Northeastern International Airways, Inc., c/o James Lawrence Smith, 1600 S.E. 10th Terrace, P.O. Box 21747, Ft. Lauderdale, Florida 33335-21747. Application of Northeastern International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests that it be issued a certificate of public convenience and necessity to engage in air transportation of persons, property and mail between points in the United States, on the one hand, and a point in a foreign country as follows: "Between Miami, Florida, on the one hand, and San Jose, Costa Rica, on the other." Conforming Applications, Motions to Modify Scope and Answers may be filed by September 6, 1983.
Aug. 10, 1983	41637	National Express, Inc., c/o Michael S. Rosen, 3000 S.W. 4th Avenue, Ft. Lauderdale, Florida 33315. Application of National Express, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in interstate and overseas scheduled air transportation of persons, and property: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 7, 1983.

Date filed	Docket No.	Description
Aug. 10, 1983	41639	Frontier Horizon, Inc., c/o Joseph B. Goldman, Baker & Hostetler, 818 Connecticut Avenue, N.W., Washington, D.C. 20006. Application of Frontier Horizon, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to provide scheduled interstate and overseas air transportation of persons, property and mail. Frontier Horizon's initial operations will consist of three round trips in the Denver-San Francisco market, three round trips in the Denver-Chicago market, two round trips in the Denver-New York market and two round trips in the Denver-Washington market. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 7, 1983.
Aug. 11, 1983	41641	Suncoast Airlines, Inc., c/o James T. Lloyd, Hydeman, Mason, Burzio & Lloyd, 1220 19th Street, N.W., Washington, D.C. 20036. Application of Suncoast Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled air transportation of passengers, property, and mail, between any point in the United States and any other point in the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 8, 1983.
Aug. 11, 1983	41642	Sun Country Airlines, Inc., c/o James R. Otten, 3000 East 72nd Street, Minneapolis, Minnesota 55450. Application of Sun Country Airlines, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in interstate and overseas scheduled air transportation of persons, property and mail: Between any points in any State in the United States or the District of Columbia or any territory or possession of the United States and any point in any State of the United States or the District of Columbia or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 8, 1983.
Aug. 12, 1983	41647	Cayman Airways Limited, c/o Joseph H. Dettmar, Garvey, Schubert, Adams & Barer, Fifth Floor, 1000 Potomac Street, N.W., Washington, D.C. 20007. Application of Cayman Airways Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to engage in foreign air transportation with respect to persons, property and mail, and scheduled service as follows: Between a point or points in the Cayman Islands; intermediate points in the Bahamas, Barbados, Cuba, Dominican Republic, Grenada, Guadeloupe, Guyana, Trinidad and Tobago, Antigua, Dominica, St. Christopher (St. Kitts)-Nevis-Anguilla, St. Lucia, St. Vincent, Belize, British Virgin Islands, Montserrat, and the Turks and Caicos, and the coterminal points Miami, Florida, Houston, Texas, New Orleans, Louisiana, Tampa, Florida, Baltimore, Maryland, Washington, D.C., Puerto Rico and the U.S. Virgin Islands. It is the intent of CAL to rely on Section 9(b) of the Administrative Procedures Act (5 U.S.C. Section 558(c)), in order that its existing permit continue in force until final disposition of this application. Answers may be filed by September 9, 1983.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 83-23008 Filed 8-19-83; 8:45 am]
BILLING CODE 6320-01-M

[Order 83-8-71]

Fitness Determination of Hawaii Pacific Helicopters, Inc., d.b.a. Cloud 9 Helicopter Tours

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-8-71, Order to Show Cause.

SUMMARY: The Board is proposing to find that Hawaii Pacific Helicopters, Inc., d.b.a. Cloud 9 Helicopter Tours is fit, willng, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complex text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than September 2, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5002.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-8-71 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-8-71 to that address.

By the Civil Aeronautics Board: August 16, 1983.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 83-23005 Filed 8-19-83; 8:45 am]
BILLING CODE 6320-01-M

[Docket 41638]

Spokane-Alberta Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled proceeding will be held on September 13, 1983, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties, including the Bureau of International Aviation, are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and evidence; (4) statements of position; and (5) proposed procedural dates. The Bureau's material shall be submitted on or before September 1, 1983, and that of the other parties on or before September 9, 1983.

Dated at Washington, D.C., August 16, 1983.

William A. Kane, Jr.,
Administrative Law Judge.

[FR Doc. 83-23003 Filed 8-19-83; 8:45 am]
BILLING CODE 6320-01-M

[Docket 41638]

Spokane-Alberta Service Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated at Washington, D.C., August 15, 1983.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 83-23004 Filed 8-19-83; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

National Radio Astronomy Observatory; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 am and 5:00 pm in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83–205. Applicant: National Radio Astronomy Observatory, Associated Universities Incorporated, Edgemont Road, Charlottsville, VA 22901. Instrument: Demagnetizer for EFOS Hydrogen Maser Frequency Standard, Model P/N 3098a. Manufacturer: Oscilloquartz, S.A., Switzerland. Intended use of instrument: See notice on page 27282 in the **Federal Register** of June 14, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The accessory is being furnished by the manufacurer which produced the instrument with which it is intended to be used. We are advised by the National Bureau of Standards in its memorandum dated July 28, 1983 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic accessory.

The Department of Commerce knows of no similar accessory being manufactured in the United States which is interchangeable with or can be readily adapted to the instrument with which the accessory is intended to be used.Q02

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-22961 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-25-M

New York University Medical Center et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517). (See especially § 301.5(f).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 1523 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 83–185. Applicant: New York University Medical Center, 550 First Avenue, New York, NY 10016. Instrument: Cryokit, LKB 14800–3 complete with Accessories. Manufacturer: LKB Instruments, Inc., Sweden. Intended use of instrument: See notice on page 23286 in the **Federal Register** of May 24, 1983. Advice submitted by: National Institutes of Health: July 20, 1983.

Docket No: 83–188. Applicant: Purdue University, FREH Building, W. Lafayette, IN 47907. Instrument: Single Tilting Specimen Cooling Holder, SCH, for JEM 200CX Microscope. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See notice on page 23286 in the **Federal Register** of May 24, 1983. Advice submitted by: National Institutes of Health: July 20, 1983.

Comments: No comments have been received with respect to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The instruments are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the National Institutes of Health in its respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic accessories.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instrument with which each accessory is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-22963 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-25-M

University of North Carolina; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No.: 83–211. Applicant: University of North Carolina, Department of Chemistry, 17–21 Venable Hall 045A, Chapel Hill, NC 27514. Instrument: Single Photon Counter System. Manufacturer: Photochemical Research Associates, Canada. Intended use of instrument: See notice on page 28119 in the **Federal Register** of June 20, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) direct observation of fluorescence decay and (2) observation of more than two decay components. The National Bureau of Standards advises in its memorandum dated August 8, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-22962 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Issuance of Permit; Dolphinarium at Flamingo Land Ltd.

On June 29, 1983, Notice was published in the **Federal Register** (48 FR 29935), that an application had been filed with the National Marine Fisheries Service by The Dolphinarium at Flamingo Land Ltd., Kirby Misperton, Nr. Malton, North Yorkshire, England, for a Permit to take three (3) Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on August 11, 1983, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking to The Dolphinarium at Flamingo Land Ltd. subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: August 11, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-22945 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-22-M

National Bureau of Standards

National Fire Codes: Request for Proposals For Revisions of Standards

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATE: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Richard E. Stevens, Vice President—Chief Engineer, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under U.S.C. 522(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Richard E. Stevens, Vice President—Chief Engineer, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Each person who submits a proposal must include his or her name and address, must identify the notice, and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

Dated: August 16, 1983.

Ernest Ambler,

Director, National Bureau of Standards.

Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the Regulations Governing Committee Projects, Committees are now accepting proposals for recommendations on document content on the documents listed below. Proposals received by the closing date indicated will be acted on by the Committee, and that action will be published in the Committee's Report. Proposals must be submitted to Vice President Richard E. Stevens on *Proposal Forms* (available from Mr. Stevens).

Committee	Document	Date
Building Construction	Proposed NFPA 90S, Mechanical Smoke Control Systems	(open)
	NFPA 204M-1982, Smoke and Heat Venting	(open)
	NFPA 205MT-1973, Plastics in Building Construction	(open)
Chemicals and Explosives	NFPA 40-1982, Cellulose Nitrate Motion Picture Film	Dec. 31, 1985
	NFPA 40E-1981, Pyroxylin Plastic	July 15, 1984
	NFPA 43A-1980, Liquid and Solid Oxidizing Materials	July 15, 1984
	Proposed NFPA 43B, Organic Peroxide	July 15, 1984
	NFPA 43C-1980, Gaseous Oxidizing Materials	July 15, 1984
	NFPA 43D-1980, Pesticides in Portable Containers	July 15, 1984
	NFPA 45-1982, Laboratories Using Chemicals	June 30, 1984
	NFPA 490-1980, Ammonium Nitrate	July 15, 1984
	NFPA 493-1978, Intrinsically Safe Process Control Equipment	Jan. 15, 1984
	NFPA 495-1982, Explosive Materials	Dec. 31, 1984
	NFPA 496-1982, Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations.	Jan. 15, 1984
	NFPA 497-1975, Classification of Class 1 Hazardous Locations for Electrical Installations in Chemical Plants.	Jan. 15, 1984
	NFPA 497M-1983, Group Classification of Flammable and Combustible Vapors and Combustible Dusts.	Jan. 15, 1984
	NFPA 498-1982, Explosives Motor Vehicles Terminals	Dec. 31, 1984
Chimneys and Other Heat and Vapor Removal Equipment	NFPA 82-1982, Incinerators, Waste and Linen Handling Systems and Equipment	Jan. 13, 1984
Combustible Metals	NFPA 48-1981, Magnesium	June 30, 1985
	NFPA 482-1982, Zirconium	June 30, 1985
	NFPA 481-1982, Titanium	June 30, 1985

Committee	Document	Date
Dust Explosion Hazards	NFPA 65–1980, Processing and Finishing of Aluminum	(open)
	NFPA 651–1980, Manufacture of Aluminum or Magnesium Powder	(open)
Fire Department Equipment	NFPA 1904–1980, Fire Dept. Aerial Ladders and Elevating Platforms	Nov. 1, 1983
Fire Hose	Proposed NFPA, 1964–1985, Nozzles and Tips for Use in Fire Fighting	Jan. 13, 1984
Fire Safety in Race Track Stable Areas	NFPA 150–1979, Fire Safety in Race Track Stables	Jan. 13, 1984
Fire safety for Recreational Vehicles	NFPA 501C–1982, Recreational Vehicles	Jan. 13, 1984
	NFPA 501D–1982, Recreational Vehicle Parks	Jan. 13, 1984
Fire Tests	NFPA 251–1979, Building Construction and Materials	Sept. 1, 1983
	NFPA 257–1980, Window Assemblies	Sept. 1, 1983
	NFPA 701–1977, Flame-Resistant Textiles and Films	Sept. 1, 1983
Fixed Guideway Transit Systems	NFPA 130–1983, Fixed Guideway Transit Systems	Jan. 13, 1984
Libraries, Museums and Historic Buildings	NFPA 910–1980, Protection of Library Collections from Fire	Jan. 13, 1984
	NFPA 911–1980, Protection of Museum Collections from Fire	Jan. 13, 1984
Loss Prevention Procedures and Practices	NFPA 27–1981, Organization, Training and Equipment of Private Fire Brigades	Dec. 31, 1984
	NFPA 601–1981, Guard Service in Fire Loss Prevention	Dec. 31, 1984
	NFPA 601A–1981, Guard Operations in Fire Loss Prevention	Dec. 31, 1984
Ovens and Furnaces	NFPA 86D–1979	Jan. 13, 1984
Protective Equipment for Fire Fighters	NFPA 1971–1981, Protective Clothing for Structural Fire Fighting	Nov. 1, 1983
	Proposed NFPA 1974, Protective Boots for Fire Fighters	Nov. 1, 1983
	Proposed NFPA 1975, Station Uniforms	Nov. 1, 1983
	NFPA 1981–1981, Self-Contained Breathing Apparatus	Nov. 1, 1983
	Proposed NFPA 1983, Personnel Ropes	Nov. 1, 1983
Pyrotechnics	NFPA 1121L–1982, Model State Fireworks Law	July 1, 1985
	NFPA 1122–1982, Code for Unmanned Rockets	July 1, 1985
	NFPA 1123–1982, Public Display of Fireworks	July 1, 1985
Storage	NFPA 231C–1980, Rack Storage of Materials	(open)
Water Extinguishing Systems	NFPA 14–1982, Standpipe and Hose Systems	(open)
	NFPA 15–1982, Water Spray Fixed Systems	Sept. 2, 1983
	NFPA 16–1980, Foam Water Sprinkler and Spray Systems	(open)
	NFPA 16A–1983, Closed-Head Foam Water Sprinkler Systems	(open)
	NFPA 20–1982, Fire Pumps	(open)

[FR Doc. 83-22955 Filed 8-19-83; 8:45 am]
BILLING CODE 3510-13-M

National Fire Codes: Request for Comment on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its fall meeting in November or its annual meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical report which will be presented at NFPA's 1984 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports will be available for distribution August 19, 1983. Comments received on or before November 4, 1983, will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: The 1984 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (No charge for single copies.) Comments on the reports should be submitted to Richard E. Stevens, Vice President—Chief Engineer, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Richard E. Stevens, at above address, (617) 328–9290.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Officer of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Richard E. Stevens, Vice President—Chief Engineer, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before November 4, 1983, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 23, 1984, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each Commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 21–25, 1984, at the Rivergate Convention Center, New Orleans, LA, by NFPA members.

Dated: August 16, 1983.

Earnest Ambler,

Director, National Bureau of Standards.

Action at the NFPA Annual Meeting in May 1984 is being proposed on the NFPA standards listed below:

1984 Annual Meeting Technical Committee Reports

Committees reporting	Documents numbers	Action
Aviation:		
Aircraft Rescue and Fire Fighting	NFPA 402M (combining existing NFPA 402 and NFPA 406M), Aircraft Rescue and Fire Fighting Procedures.	O-C.
	NFPA 408, Aircraft Hand Fire Extinguishers	O-C.
	NFPA 414, Aircraft Rescue and Fire Fighting Vehicles	O-C.

1984 ANNUAL MEETING TECHNICAL COMMITTEE REPORTS—Continued

Committees reporting	Documents numbers	Action
	NFPA 422M, Aircraft Fire Investigators Manual	O-P.
Boiler-Furnace Explosions	NFPA 85B, Furnace Explosions in Natural Gas-Fired Multiple Burner Boiler-Furnaces.	O-C.
	NFPA 85D, Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces.	O-C.
Building Construction: Air Conditioning.	NFPA 90B, Warm Air Heating and Air Conditioning Systems	O-P.
Compressed Natural Gas Vehicular Fuel Systems.	NFPA 52, CNG Systems on Motor Vehicles and Fueling Systems	N-O.
Fire Department Equipment	NFPA 1931, Fire Department Ground Ladders	O-C.
	NFPA 1932, Use, Maintenance and Service Testing of Fire Department Ground Ladders.	N-O.
Fire Hose	NFPA 1963, Screw Threads and Gaskets for Fire House Connections	O-P.
Flammable Liquids:		
Classification and Properties of Flammable Liquids.	NFPA 325M, Fire-Hazard Properties of Flammable Liquids, Gases and Volatile Solids.	O-P.
General Storage of Flammable Liquids.	NFPA 30, Flammable and Combustible Liquids Code	O-P.
	NFPA 30A, Service Stations	N-O.
	NFPA 395, Flammable and Combustible Liquids on Farms and Isolated Construction Projects.	R.
Internal Combustion Engines	NFPA 37, Stationary Combustion Engines and Gas Turbines	O-P.
Marine Fire Protection:		
Gas Hazards	NFPA 306, Control of Gas Hazards on Vessels	O-P.
Shipbuilding, Repair and Lay-Up	NFPA 312, Fire Protection of Vessels During Construction, Repair and Lay-Up.	O-P.
National Fuel Gas Code	NFPA 54, National Fuel Gas Code	O-P.
Non-Nuclear Power Generating Plants.	NFPA 850, Fossil Fuel-Fired Steam Electric Generating Stations	N-O.
Portable Fire Extinguishers	NFPA 10, Portable Fire Extinguishers	O-P.
Pyrotechnics	NFPA 1124 (existing NFPA 44A), Manufacturing, Transportation and Storage of Fireworks.	O-C.
Safety to Life [1]	NFPA 101, Code for Safety to Life from Fire in Buildings and Structures	O-P.
Signaling Systems: Detection Devices.	NFPA 72E, Automatic Fire Detectors	O-P.
Water Extinguishing Systems:		
Automatic Sprinklers	NFPA 13D, Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes.	O-C.
Water Tanks	NFPA 22, Water Tanks for Private Fire Protection	O-P.

[1] NOTE.—The Report of the Committee on Safety To Life on NFPA 101, Life Safety Code, appears in this Technical Committee Report. The Supplementary Report, however, will appear in the 1984 Fall Meeting Technical Committee Documentation for presentation to the Association at the 1984 Fall Meeting.

Types of action—Proposed Action on Official Documents: O-P Partial Amendments; O-C Complete Revision. Proposed Action on New Documents: N-O Official Adoption. Proposed Action on Tentative Documents: T-O Official Adoption. Other Proposed Action: R Reconfirmation; W Withdrawal.

[FR Doc. 83-22058 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-13-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing; Department of Agriculture et al.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

Department of Agriculture

SN 6-419,637 Preparation of An Entomopathogenic Fungal Insect Control Agent

SN 6-473,395 Running Skyine Intermediate Support and Multi-span Carriage

SN 6-473,396 Preparation of Esters of Resin Acids, Resins, Rosins, and Derivatives thereof

SN 6-473,478 Biological Process for Reducing Energy Requirement for Post Refining of Pulps

SN 6-474,996 Novel Diolefin Pheromone Mimics as Disruptants of Sexual Communication in Insects

SN 6-475,784 Method for Reducing Sodium Content and Simultaneously Increasing Potassium Content of a Food

SN 6-491,151 A Vapor Process for Mineral Dyeing Cellulosic Fabrics

SN 6-496,687 Synthetic Pheromone for the Spined Soldier Bug, *Podisus Maculiventris*

SN 6-506,482 Method for Obtaining a Purified Fraction From a Mixture Using A Magnetic Fluid

Department of the Air Force

SN 6-171,614 (4,387,989) Coherent Optical Feature Identifier Apparatus

SN 6-192,406 (4,387,971) Dynamic Damping System

SN 6-200,226 (4,390,816) Scan Corrected Vidicon Camera Apparatus

SN 6-216,103 (4,388,614) Automatically Sequenced Signaling System

SN 6-225,556 (4,387,344) Photon Storage Tube High Power Laser System

SN 6-231,074 (4,387,955) Holographic Reflective Grating Multiplexer/Demultiplexer

SN 6-239,955 (4,390,854) Broad Bandwidth Surface Acoustic Wave Filter Apparatus with Staggered Tuning

SN 6-286,817 (4,387,467) Satellite Test Chamber with Electromagnetic Reflection and Resonance Damping for Simulating System Generated Electromagnetic Pulses

SN 6-308,976 (4,387,962) Corrosion Resistant Laser Mirror Heat Exchanger

Department of Health and Human Services

SN 6-508,323 Genetic Reassortment of Rotaviruses for Production of Vaccines and Vaccine Precursors

SN 6-509,819 Method of Joining Plastic Optical Fibers and Connections Obtained

Department of the Interior

SN 6-324,173 Method for Soldering Aluminum and Magnesium

[FR Doc. 83-23020 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations with the Government of Haiti on Category 336 (Cotton Dresses)

AGENCY: Comments for the Inplementation of Textile Agreement.

ACTION: On July 27, 1983, the United States Government, under its bilateral agreement relating to trade in cotton, wool and man-made fiber textiles and textile products of March 25 and April 1, 1982, requested the Government of Haiti

to enter into consultations concerning exports to the United States of cotton dresses in Category 336, produced or manufactured in Haiti.

The purpose of this notice is to advise that, if no solution is agreed upon between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textile products in Category 336, produced or manufactured in Haiti and exported to the United States during the twelve-month period beginning on July 27, 1982, may be restrained at a level of 62,264 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 336 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Departemt of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Dated: August 17, 1983.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-22965 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-25-M

Adjusting the Import Restraint Level for Certain Cotton Textile Products from Pakistan

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase for swing and carryforward form 19,028,593 numbers to 22,254,034 numbers for cotton terry and other pile towels in Category 363, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1983.

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: The Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan provides, among other things, for percentage increases in certain specific category ceilings during an agreement year (swing) and for the borrowing of yardage from the level in the following year (carryforward). Pursuant to the terms of the bilateral agreement, and at the request of the Government of Pakistan, the import restraint level established for Category 363 is being increased to 22,254,034 numbers for the twelve-month period which began on January 1, 1983 and extends through December 31, 1983.

EFFECTIVE DATE: August 23, 1983.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International Trade Specilist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 17, 1982 there was published in the **Federal Register** (47 FR 56536) a letter dated December 14, 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 textile products, including Category 363, produced or manufactured in Pakistan and exported to the United States during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. In accordance with the terms of the bilateral agreement and at the request of the Government of Pakistan, the United States Government has agreed to increase the level of restraint for cotton textile products in Category 363 to 22,254,034 numbers. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase that level to the designated amount.

Dated: August 17, 1983.

Walter C. Lenahan,

Chairman for the Implementation of Textile Agreements.

August 17, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 14, 1982, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, during the twelve-month period beginning on January 1, 1983 and extending through December 31, 1983 of cotton textile products in certain specified categories, produced or manufactured in Pakistan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on August 23, 1983, the twelve-month level of restraint established for cotton textile products in Category 363 to 22,254,034 numbers.[2]

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan 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. 83-22966 Filed 8-19-83; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1982.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following request for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Ecclesiastical Endorsement

Certifies that clergy applying for the chaplaincy in the Armed Forces are qualified members of a faith group recognized by DOD. It is an essential element of a chaplain's professional qualifications under Title 10 U.S.C. 643 and provides documentation of years of professional experience for the computation of constructive credit used in determining grade, date of rank and eligibility for promotion of appointees.

Non-profit institutions; 1,000 responses; 1,000 burden hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20301, telephone (202) 697–1195 and Mr. John Wenderoth, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection request may be obtained from Mr. Robert L. Newhart, OASD (MRA&L) PI, Room 3C800, Pentagon, Washington, D.C 20301, telephone (202) 695–0643.

Dated: August 17, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-22902 Filed 8-19-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Nuclear Agency

Membership of the Defense Nuclear Agency Performance Review Boards

AGENCY: Defense Nuclear Agency, Defense.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for appointees of the DNA PRBs is August 24, 1983.

FOR FURTHER INFORMATION CONTACT: J. David Woodend, Chief, Civilian Personnel Management Division (MPCV), Defense Nuclear Agency, Washington, DC 20305, (202) 325–7591/92.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRBs are set forth below. All are DNA officials unless otherwise identified.

Board 1

Reid, John E., Director, Acquisition Management Directorate.

Carew, Paul H., Comptroller.

Tate, Grayson D., Jr., MG, USA, Deputy Director (Operations & Administration).

Dellas, Ray W., Staff Director, Office of Small and Disadvantaged Business Utilization, Defense Logistics Agency (DLA.)

Lyons, Robert E., Principal Deputy Director, Defense Communications Engineering Center (DCEC), Defense Communications Agency (DCA).

Aut, Warren E., RADM, USN, Commander, Field Command.

Board 2

Soper, Gordon K., Scientific Assistant to Deputy Director (Science & Technology).

Sevin, Eugene, Assistant to Deputy Director (Science & Technology) for Experimental Research.

Cikotas, Bronius, Chief, Electromagnetic Pulse Effects Division.

Mansfield, John E., Assistant to Deputy Director (Science & Technology) for Theoretical Research.

Rubenstein, Morton J., Technical Programs Manager, Nuclear Assessment Directorate.

Slaughter, John I., Chief, Aerospace Systems Division, Shock Physics Directorate.

Linger, Don A., Chief, Strategic Structures Division, Shock Physics Directorate.

Fitz, Harold C., Jr., Chief, Atmospheric Effects Division, Radiation Directorate.

Myers, Lawrence S., Jr., Scientific Advisor to Director, Armed Forces Radiobiology Research Institute (AFRRI).

Aut, Warren E., RADM, USN, Commander, Field Command.

Lyons, Robert E., Principal Deputy Director, Defense, Communications Engineering Center (DCEC), Defense Communications Agency (DCA).

Dellas, Ray W., Staff Director, Office of Small and Disadvantaged Business Utilization, Defense Logistics Agency (DLA).

Dated: August 17, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-22901 Filed 8-19-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-228, et al.]

American Linen Supply Co., et al.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

In the matter of American Linen Supply Co. (ERA Docket No. 83–CERT–228), Union Carbide Corp. (ERA Docket No. 83–CERT–241), GTE Products Corp. (ERA Docket No. 83–CERT–242), Carnation Co. (ERA Docket No. 83–CERT–243), EM Science Co. (ERA Docket No. 83–CERT–245), Borden Chemical Div. (ERA Docket No. 83–CERT–246), Air Products and Chemicals, Inc. (ERA Docket No. 83–CERT–247) and Penn Dairies, Inc. (ERA Docket No. 83–CERT–248).

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the

date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	Federal Register notice of application
American Linen Supply Co., Cincinnati Plant, Cincinnati, Ohio	June 24, 1983	83-CERT-226	48 FR 33736, July 25, 1983.
Union Carbide Corp., Fostoria Plant, Fostoria, Ohio	June 29, 1983	83-CERT-241	Do.
GTE Products Corp., Warren Plant, Warren, Pa	June 28, 1983	83-CERT-242	Do.
Carnation Co., Maysville Plant, Maysville, Ky	do	83-CERT-243	Do.
EM Science Co., Cincinnati Plant, Cincinnati, Ohio	July 1, 1983	83-CERT-245	Do.
Borden Chemical Div., Woodlawn Plant, Woodlawn, Ohio	do	83-CERT-246	Do.
Air Products and Chemicals, Inc., Trexlertown Plant, Trexlertown, Pa.	do	83-CERT-247	Do.
Penn Dairies, Inc., Lancaster Plant, Lancaster, Pa., York Plant, York, Pa.	July 5, 1983	83-CERT-248	Do.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-22899 Filed 8-19-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-255, et al.]

Moore Business Forms, Inc., et al.; Certifications of Eligible Use of Natural Gas To Displace Fuel Oil

In the matter of Moore Business Forms, Inc., (ERA Docket No. 83–CERT–255), Occidental Chemical Corp. (ERA Docket No. 83–CERT–256), Airco Carbon (Div. Airco, Inc.) (ERA Docket No. 83–CERT–257), Federal Paper Board Co., Inc. (ERA Docket No. 83–CERT–258) and E. I. du Pont de Nemours & Co. (ERA Docket No. 83–CERT–259).

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application of file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, S.W., Washington D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	Federal Register notice of application
Moore Business Forms, Inc., Buckhannon, W. Va.	July 7, 1983	83-CERT-255	48 FR 34500 July 29, 1983
Occidental Chemical Corp., Tonawanda, N.Y., Niagara Falls, N.Y.	do	83-CERT-256	Do.
Airco Carbon Div. of Airco, Inc., St. Mary's, Pa.	July 8, 1983	83-CERT-257	Do.
Federal Paper Board Co., Inc., Riegelwood, N.C.	July 11, 1983	83-CERT-258	Do.
E. I. du Pont de Nemours & Co., Waynesboro, Va.	July 12, 1983	83-CERT-259	Do.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on August 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-22900 Filed 8-19-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-165, as amended]

Spaulding Fibre Co., Inc., Application for Amendment to Existing Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On July 6, 1983, Spaulding Fibre Co., Inc., Tonawanda, N.Y., was granted a certificate of an eligible use of natural gas to displace fuel oil by the Economic Regulatory Administration (ERA) (Docket No. 83–CERT–165). The certification was for the eligible use of 517,700 Mcf per year of natural gas purchased from Northern Intrastate Pipeline Co. for use by Spaulding Fibre Co. at its facility located in Tonawanda, N.Y. The volume of natural gas was estimated to displace the use of approximately 89,425 barrels of No. 2 fuel oil (1.0 percent sulfur) per year at the above facility. The transporter and local distributor were National Fuel Gas Supply Corp. and National Fuel Gas Distribution Corp., respectively. That certificate will expire July 5, 1984.

On July 20 and August 1, 1983, Spaulding Fibre Co. filed applications for amendment to the existing certification of an eligible use to add Energy Oil, Inc., Longmont, Colo., Subsea Oil & Gas, Inc., Alma, N.Y., Midwest Exploration, Inc., Oklahoma City, Okla., and Sinclairville Petroleum Corp., Orchard Park, N.Y., as eligible sellers, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). All other aspects of the July 6, 1983, certification remain unchanged. The applications for

amendment are on file and available for public inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning these applications for amendment to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of these applications for amendment may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary, further notice will be given to the applicant and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on August 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-22896 Filed 8-19-83; 8:45 am]

BILLING CODE 6450-01-M

Dunlop Tire and Rubber Corp., et al.; Applications for Certification of the Use of Natural Gas To Displace Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users which have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding these applications is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

1. 83-CERT-280.

Applicant: Dunlop Tire and Rubber Corp., Buffalo, N.Y.

Date Filed: July 27, 1983.

Facility Location: Tonawanda, N.Y.

Gas Volume: 760,000 Mcf per year.

Oil Displacement: 5,076,750 gallons No. 6 fuel oil (1.5% sulfur).

Eligible Seller: Bounty Oil & Gas, Jamestown, N.Y.; U.S. Energy Development Corp., Buffalo, N.Y.; Penn State Joint Venture, Reno, Nev.; Envirogas Inc., Hamburg, N.Y.

Transporter: National Fuel Gas Supply Corp., Oil City, Pa.; National Fuel Gas Distribution Corp., Buffalo, N.Y.

2. 83-CERT-293.

Applicant: Maryland Cup Corp., Owings Mills, Md.

Date Filed: August 4, 1983.

Facility Location: Baltimore, Md.

Gas Volume: 50,000 Mcf per year.

Oil Displacement: 8,700 barrels No. 2 fuel oil (.3% sulfur).

Eligible Seller: Exxon U.S.A., Houston, Tex.; POI Energy, Inc., Cleveland, Ohio; Target Exploration, Inc., Columbia, Md.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va.; Baltimore Gas and Electric Co., Baltimore, Md.

3. 83-CERT-294.

Applicant: Lancaster Colony Corp., Columbus, Ohio.

Date Filed: August 5, 1983.

Facility Location: Koneta Rubber Co., Wapakoneta, Ohio.

Gas Volume: 23,725 Mcf per year.

Oil Displacement: 169,000 gallons No. 2 fuel oil (.29% sulfur).

Facility Location: Candle-lite Division, Leesburg, Ohio.

Gas Volume: 36,000 Mcf per year.

Oil Displacement: 241,000 gallons No. 2 fuel oil (.29% sulfur).

Totals: Gas Volume 59,725 Mcf per year. Oil Displacement 410,000 gallons of No. 2 oil.

Eligible Seller: John C. Mason, Millersburg, Ohio.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va.; Pike Natural Gas Co., Hillsboro, Ohio; West Ohio Gas Co., Lima, Ohio.

4. 83-CERT-295.

Applicant: PPG Industries Inc., Pittsburgh, Pa.

Date Filed: August 8, 1983.

Facility Location: Meadville, Pa.

Gas Volume: 1,278,000 Mcf per year.

Oil Displacement: 10,000,000 gallons No. 2 fuel oil (.5% sulfur).

Eligible Seller: Energy Buyers Service Corp., Houston, Tex. Bounty Oil & Gas, Inc., Jamestown, N.Y. Dane Baird Investments, Inc., Belmont, Mass.

Transporter: National Fuel Gas Supply Corp., Buffalo, N.Y. National Fuel Gas Distribution Corp., Erie, Pa.

5. 83-CERT-298.

Applicant: Collins & Aikman Corp., Charlotte, N.C.

Date Filed: August 9, 1983.

Facility Location: Hickory, N.C.

Gas Volume: 85,500 Mcf per year.

Oil Displacement: 583,680 gallons No. 6 fuel oil (2.1% sulfur).

Eligible Seller: Oklahoma Natural Gas Co., Tulsa, Okla.

Transporter: Transcontinental Gas Pipeline Corp., Houston, Tex. Northern Natural Gas Co., Omaha, Nebr. Piedmont Natural Gas Co., Inc., Charlotte, N.C.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register.** The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-day comment

period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register.**

Issued in Washington, D.C., on August 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-22996 Filed 8-19-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-83-22; FC Case No. 54012-6166-01,02-12]

Indiana & Michigan Electric Co.; Acceptance of Petition and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition and availability of certification for a temporary public interest exemption; Indiana & Michigan Electric Company.

SUMMARY: On August 12, 1983, Indiana & Michigan Electric Company (IMECo) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a temporary public interest exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for two oil-fired boilers to be operated at its Rockport Plant in Rockport, Indiana.

Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981) ("final rules") (10 CFR Parts 500, 501, and 503). Eligibility and evidentiary requirements governing the temporary public interest exemption are contained in § 503.25 of the final rules.

The units for which the petition was filed are oil-fired auxiliary boilers, each with a design heat input rate of approximately 600 million Btu/hr, which are to be used under the requested exemption during the construction of IMECo's coal-fired electric generating station at Rockport, Indiana. The requested exemption period is from October, 1983 to December, 1984 during which the boilers will be utilized in conjunction with the testing of the main boilers and other facility systems.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to § 501.3 of the final rules. A review of the petition is provided in the "SUPPLEMENTARY INFORMATION" section below.

As provided for in sections 701 (c) and (d) of FUA and §§ 501.31 and 501.33 of the final rules, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m.

ERA will issue a final order granting or denying the petition for temporary exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments and any requests for a public hearing are due no later than October 6, 1983.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing are to be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. Docket No. ERA-FC-83-022 should be printed on the outside of the envelope and the document contained therein.

FOR FUTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-093, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-1316.

Marya Rowan, Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: IMECo plans to install two new oil-fired auxiliary boilers to support the construction and operation of a 2,600 megawatt coal-fired electric powerplant (Units 1 and 2) presently under construction at its Rockport Plant, Rockport, Indiana. These units will be operated during the exemption period for plant heating and start-up of Units 1 and 2. At the end of the requested exemption period the oil-fired boilers will remain operational in a support function as permitted by 10 CFR 500.2. [During operation of the coal-fired facility the oil consumed by the auxiliary boilers for unit ignition, start-up, flame stabilization, testing, and other control purposes will not exceed twenty-five percent (25%) of the total annual Btu heat input of the auxiliary units and the electric powerplant. Under the definition of "primary energy source" in 10 CFR 500.2, the use of this amount of oil for these purposes, is not prohibited by the Act. See *Associated Electric Cooperative, et al.*, Interpretation 1980-42 (45 FR 82572 (December 15, 1980)).] Such use is not prohibited by FUA; accordingly, the petitioner is not requesting a permanent exemption.

The final rules provide, at § 503.25(c), a certification alternative to the filing of a more lengthy exemption petition when the use of oil or natural gas is to be in conjunction with (and during) the construction of alternate-fuel fired units. In accordance with that section IMECo certified to ERA that the auxiliary boilers will be operated on oil only during the construction of the 2,600 megawatt coal-fired electric powerplant at the Rockport Plant, and that other future use of oil in the units will not be subject to FUA prohibition. Accordingly, the period of the requested exemption is from October 1983 to December 1984.

In accordance with the evidentiary requirements of § 503.25(c), IMECo also included as part of its petition exhibits containing the basis for the certifications described above.

Pursuant to 10 CFR 501.3 of the final rules, ERA hereby accepts IMECo's petition for a temporary public interest exemption. ERA retains the right, however, to request additional relevant information from IMECo at any time during the pendency of these proceedings. As provided in § 501.3(b)(4) of the final rules, the acceptance of the petition by ERA does not constitute a determination that IMECo is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on August 16, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-22995 Filed 8-19-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-672-000]

Baltimore Gas and Electric Co.; Filing

August 17, 1983.

Take notice that on August 12, 1983, Baltimore Gas and Electric Company (BG&E) filed, on behalf of Public Service Electric and Gas Company (PSE&G), a Letter Agreement dated August 10, 1983.

BG&E states that this filing establishes a rate to be used in accounting for certain specified transmission capability which is to be made available by BG&E for use by PSE&G.

BG&E further states that no new facilities will be installed nor will existing facilities be modified in connection with these schedules.

BG&E requests an effective date of August 15, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E, Washington, D.C 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 1, 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 motion to intervene. copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22980 filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF83-2031-000]

Bonneville Power Administration; Filing

August 16, 1983.

Take notice that on August 8, 1983, Bonneville Power Administration ("BPA"), submitted for filing a request to the Commission "to extend final confirmation and approval of a rate for the sale of power generated at the Hanford Generating Project (HGP)."

BPA states that the rate was previously approved by the Economic Regulatory Administration for the period ending June 30, 1983. Therefore, BPA is requesting that the HGP rate continue in effect under recently executed contracts, until such time that the BPA Administrator tenders new rates to the Commission, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2).

BPA further states that HGP, an electric generating plant, is owned by the Washington Public Power Supply System (WPPSS), and was constructed based on agreements among WPPSS, BPA, and 76 Pacific Northwest utility participants.

Accordingly, BPA requests that confirmation and approval be granted with an effective date of June 30, 1983, and that all the necessary waivers of the Commission's regulations be granted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 25, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-22981 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5699-001]

City of Bonney Lake, Washington; Surrender of Exemption From Licensing of a Small Hydroelectric Project of Five Megawatts or Less

August 17, 1983.

Take notice that the City of Bonney Lake, Washington, Exemptee for the Victor Falls Project No. 5699, has requested that its exemption be terminated. The exemption from licensing was issued on July 6, 1982, and the project would have been located on Fennel Creek in Pierce County, Washington.

The Exemptee filed the request on May 16, 1983, and the surrender of the exemption from licensing for Project No. 5699 is deemed accepted as of May 16, 1983, and effective 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22982 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-670-000]

Connecticut Light and Power Co.; Filing

August 17, 1983.

Take notice that on August 12, 1983, Connecticut Light and Power Company (CL&P) tenderd for filing a proposed rate schedule with respect to a Transmission Agreement dated September 4, 1982 between (1) CL&P and Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and (2) Westfield Gas and Electric Department (WG&E).

CL&P states that the Transmission Agreement provides for transmission services to WG&E for the wheeling of WG&E's purchase, from the Massachusetts Municipal Wholesale Electric Company (MMWEC), of a portion of MMWEC's entitlement in generating units of the Shrewsbury Municipal Light Plant and Peabody Municipal Light Plant during the one week period commencing September 4, 1982.

CL&P further states that the transmission charge rate is a weekly rate equal to one-fifty second of the annual average cost of transmission service on the electric transmission system of the NU Companies, which is determined in accordance with Appendix A and Exhibits I, II, and III, thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week), and (ii) the number of kilowatts WG&E is entitled to receive during such seek. The monthly transmission charge is reduced by up to 50% to give due recognition for payments made by WG&E to other utility systems also providing related transmission service.

CL&P requests an effective date of September 4, 1983, and therefore requests waiver of the Commission's notice requirements.

According to CL&P copies of this filing have been mailed to WMECO and WG&E.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 1, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22983 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-671-000]

Connecticut Light and Power Co.; Filing

August 17, 1983.

Take notice that on August 12, 1983, Connecticut Power and Light Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated September 14, 1982, between (1) CL&P and Western Massachusetts Electric Company (WMEC, and together with CL&P, the NU Companies) and (2) Massachusetts Municipal Wholesale Electric Company (MMWEC).

CL&P states that the Transmission Agreement provides for transmission services to MMWEC for the wheeling of MMWEC's purchase, from the City of Holyoke, Massachusetts Gas & Electric Department, of an entitlement in Holyoke's Unit No. 10 during the period commencing September 14, 1982 and terminating October 23, 1982.

CL&P further states that the transmission charge rate is a weekly rate equal to one-fifty second of the annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week), and (ii) the number of kilowatts MMWEC is entitled to receive each such week. The weekly transmission charge is reduced by up to 50 percent to give due recognition for payments made by MMWEC's participants to other utility systems also providing related transmission service.

CL&P requests an effective date of September 14, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been mailed to WMECO and MMWEC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 1, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22984 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-751-004]

Delmarva Power & Light Co.; Notice of Compliance

August 17, 1983.

Take notice that on July 11, 1983, Delmarva Power & Light Company submitted for filing "Clarifications of February 2, 1983 Offer of Settlement" pursuant to a Commission letter order, issued on June 30, 1983.

Delmarva states that it and the Cities of Newark, New Castle and Milford and the Town of Smyrna, Delaware mutually agreed to certain clarifications of portions of the Offer of Settlement.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before August 25, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22985 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA83-11-000]

Dow Chemical Co.; Filing of Petition for Review Under 42 U.S.C. 7194

August 17, 1983.

Take notice that Dow Chemical Company on August 8, 1983, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before September 1, 1983, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before September 1, 1983, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-22986 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-445-000]

Equitable Gas Co.; Application

August 17, 1983.

Take notice that on July 27, 1983, Equitable Gas Company (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP83-445-000 an application pursuant to

Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation through Equitable's capacity in Columbia Gas Transmission Corporation's (Columbia) system quantities of natural gas for Equitable's subsidiaries, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is proposed that Columbia would receive natural gas, the specific quantity subject to change, to be nominated by Kentucky West Virginia Gas Company (Kentucky West Virginia), Philadelphia Oil Company (Philadelphia Oil), and Kepco, Inc. (Kepco), from the existing points of interconnection between Columbia and Kentucky West Virginia in Floyd and Martin Counties, Kentucky. It is stated that such volumes are to be transported and delivered to the interconnection between the facilities of Columbia and Equitable located in Wetzel County, West Virginia, and Greene County, Pennsylvania, and to the interconnection between the facilities of Columbia and Texas Eastern Transmission Corporation located in Greene County, Pennsylvania.

Equitable would continue to pay Columbia pursuant to Columbia's FERC Gas Tariff, Original Volume No. 2, Rate Schedule X–70. However, Equitable would charge Kentucky West Virginia, Philadelphia Oil and/or Kepco a monthly demand charge equal to the product of the ratio of their respective deliveries to the total contract demand of Equitable in Columbia multiplied by Columbia's effective monthly demand charge to Equitable. Equitable would also charge Kentucky West Virginia, Philadelphia Oil and/or Kepco a commodity charge equal to the product of their respective volumes received by Columbia, multiplied by the effective commodity charge stated in Columbia's FERC Gas Tariff, Rate Schedule X–70. The rate specified might vary from time to time to reflect changes in transportation service rates charged Equitable by Columbia.

The application states that the proposed service will be beneficial to Equitable in that it would reduce Equitable's transportation expenses by allocating a portion thereof to Equitable's subsidiaries as set forth hereinbefore. It is said that such reduction in transportation expenses would benefit Equitable's distribution customers in Pennsylvania and West Virginia.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 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 385.14 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 Equitable to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–22987 Filed 8–19–83; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2516–001, et al.]

Hydroelectric Applications (Potomac Edison Company, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No: 2516–001.

c. Date Filed: June 24, 1983.

d. Applicant: Potomac Edison Company.

e. Name of Project: Dam No. 4 Project.

f. Location: On the Potomac River in Berkley County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Robert R. Winter, Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740.

i. Comment Date: September 28, 1983.

j. Description of Project: On February 26, 1982, an Order Amending License was issued authorizing the Licensee to increase the installed capacity from 1,000 to 2,300 kW by upgrading its two existing turbine-generator units from 500 to 700 kW each and installing a new 900-kW unit. The Licensee found that upgrading the existing units is not technically and economically feasible, and now proposes to increase the capacity from 1,000 to 1,900 kW with the installation of a new 900–kW turbine-generator unit within the existing powerhouse. Licensee estimates an average annual generation of 13,522,200 kWh.

k. Purpose of Project: Licensee distributes project energy to local customers.

l. This notice also consists of the following standard paragraphs: B and D1.

m. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "PROTEST" or "MOTION To INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy must be sent to: Fred Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address, and to each representative of the Licensee specified in the particular application.

2a. Type of Application: License (Under 5 MW).

b. Project No: 3555–001.

c. Date Filed: June 24, 1983.

d. Applicant: City of Broken Bow, Oklahoma.

e. Name of Project: Hugo Water Power Project.

f. Location: On Kiamichi River in Choctaw County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)–825(r).

h. Contact Person: Mr. Richard H. Davis, Jr., President, RAMEL Corp., Rt. 5, Box 4813, Nashville, Arkansas 71852.

i. Comment Date: October 19, 1983.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Hugo Dam and Reservoir and would consist of: (1) a new penstock utilizing a section of the gated spillway near the right river bank (an alternate siphon penstock design will be considered); (2) a new powerhouse containing a turbine-generator unit having a total rated capacity of 3,000 kW; (3) a tailrace returning flow to the river immediately downstream of the spillway stilling basin; (4) a new transmission line, approximately 2,600 feet long, connecting to an existing 69–kV line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 16,600,000 kWh. Project energy would be sold to the Public Service Company of Oklahoma. This application for license was filed during the term of the Applicant's preliminary permit for Project No. 3555.

k. This notice also consists of the following standard paragraphs: A3, A9, B. C and D1.

3a. Type of Application: Exemption (5MW or Less).

b. Project No: 4458–002.

c. Date Filed: February 1, 1983.

d. Applicant: Middle Fork Irrigation District.

e. Name of Project: Middle For Irrigation District Hydroelectric.

f. Location: On Clear, Eliot, and Coe Branches of the Middle Fork Hood River and West Evans Creek, in Hood River County, Oregon.

g. Filed Pursuant to: Energy Security Act, 1980 (16 U.S.C. §§ 2705 2708 as amended).

h. Contact Person: Mr. David H. Bick, P.E., Michener Associates, Inc., P.O. Box 2176, Tri-Cities, Washington 99302.

i. Comment Date: October 3, 1983.

j. Competing Application: Project No. 6645–000. Date Filed: 8/27/82. Notice issued March 11, 1983.

k. Description of Project: The proposed project, consisting of existing facilities owned by the Middle Fork Irrigation District (District) with developments on Clear, Eliot and Coe Branches of the Middle Fork Hood River and West Evans Creek would consist of: (1) an existing 110-foot-high dam on Clear Branch, and 2 existing dams on West Evans Creek, 16-foot-high and 15-foot-high; (2) an existing reservoir on Clear Branch with a surface area of 80 acres and a storage capacity of 3,540 acre-feet at a surface elevation of 2,976 feet (msl); (3) 2 existing sediment basins on West Evans Creek; (4) 3 existing penstocks totaling 27,462 feet in length; (5) an existing 10-foot-high, 90-foot-long diversion structure on Eliot Branch; (6) 2 existing trapezoidal canals totaling 14,784 feet in length on Coe and Eliot Branches respectively; (7) a 10-foot-high, 90-foot-long diversion structure on Coe Branch; (8) 4 penstocks totaling 24,720 feet in length; (9) 3 powerhouses with a combined rated capacity of 3,250 kW; and (10) a 2.3-mile-long transmission line tying into an existing District line. Flows from Powerhouse No. 3 will discharge into Rogers Creek. The combined estimated average annual energy output would be 22.72 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: Project power will be sold to Pacific Power and Light Company.

m. This notice also consists of the following standard paragraphs: A2, A9, B, C and D3a.

4a. Type of Application: Exempted (5 MW or less).

b. Project No: 6167–003.

c. Date Filed: June 27, 1983.

d. Applicant: Mr. Ronald Rulofson.

e. Name of Project: Eltapom Creek Hydroelectric.

f. Location: On Eltapom Creek partially within the Trinity National Forest in Trinity County, California near the Town of Hyampom.

g. Filed Pursuant to: Section 408 of Energy Security Act of 1980 (16 US..C. 2705, and 2708 *as amended*).

h. Contact Person: Mr. Louis J. Simpson, 2704 Hartnell, Suite C, Redding, California 96002.

i. Comment Date: September 26, 1983.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high diversion structure at elevation 2,225 feet; (2) a 36-inch-diameter, 2,700-foot-long penstock; (3) a powerhouse containing generating units with a combined rated capacity of 840 kW; and (4) a 2-mile-long, 12-kV transmission line connecting the powershouse with an existing Pacific Gas and Electric Company (PG&E) transmission line north of the project.

k. Purpose of Project: The estimated 3.7 million kWh of project energy would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

5a. Type of Application: Exemption from Licensing.

b. Project No: 7187–000.

c. Date Filed: March 31, 1983.

d. Applicant: Pankratz Lumber Company.

e. Name of Project: Boulder Creek.

f. Location: On Boulder Creek near the town of Marblemount in Skagit County, Washington.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. John R. Pankratz, Managing Partner, Pankratz Lumber Company, 2707 NE Blakeley St., Seattle, Washington 98105.

i. Comment Date: September 23, 1983.

j. Competing Application: Project No. 6984–000. Date Filed: January 6, 1983.

k. Description of Project: The proposed project would consist of: (1) a 6-foot-high concrete diversion structure at elevation 2,105 feet; (2) a 32-inch-diameter, 8,800-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 4,930 kW; and (4) a 2.7-mile-long, 34.5-kV transmission line connecting the project with the existing Puget Sound Power and Light Company's (PP&L) transmission line west of the project.

l. Purpose of Project: Project energy would be sold to PP&L.

m. This notice also consists of the following standard paragraphs: A4, B, C and D3a.

6a. Type of Application: Preliminary Permit.

b. Project No: 7219–001.

c. Date Filed: July 8, 1983.

d. Applicant: Family Power Partners.

e. Name of Project: Willow Falls Dam Hydroelectric Project.

f. Location: Willow River in St. Croix County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Doug Spaulding, INDECO of Minnesota, 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: October 17, 1983.

j. Description of Project: The proposed project would consist of: (1) an existing 160-foot-long, and 60-foot-high reinforced concrete dam; (2) an existing reservior with a total storage capacity of 1,295 acre-feet; (3) the renovation of an existing powerhouse approximately 1000 feet downstream of the dam and an existing 50-inch-diameter penstock running from the dam to the powerhouse; (4) the proposed installation of a 1.0 MW turbine/generator with an estimated annual power generation of 3.4 GWh; (5) a proposed transmission line less than one mile in length; and (6) appurtenant facilities.

k. Purpose of Project: Applicant plans to sell the power generated to the

Northern States Power Company whose lines run within one mile of the proposed project site.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $25,000.

n. *Purpose of Preliminary Permit*—A preliminary permit does not authorize constuction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

7a. Type of Application: Exemption (5 MW or less).

b. Project No: 7225–000.

c. Date Filed: April 15, 1983.

d. Applicant: Little Salmon River Estates, Inc.

e. Name of Project: Fall Creek.

f. Location: On Fall Creek, partially within the Bureau of Land Management's lands, in Adams County, Idaho.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 1708 as amended).

h. Contact Person: Carl L. Myers, 750 Warm Springs Avenue, Boise, Idaho 83702.

i. Comment Date: September 26, 1983.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high diversion structure at elevation 4,280 feet; (2) a 12-inch-diameter, 6,500-foot-long penstock; (3) a powerhouse at elevation 2,880 feet containing a generating unit with a rated capacity of 600 kW; and (4) a transmission line. The average annual energy generation is estimated to be 2,146,000 kWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

8a. Type of Application: Preliminary Permit.

b. Project No: 7250–000.

c. Date Filed: April 29, 1983.

d. Applicant: City of Buckley.

e. Name of Project: South Prairie Creek.

f. Location: On South Prairie Creek in Pierce County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Hill, Mayor, City of Buckley, P.O. Box "D", Buckley, Washington 98321.

i. Comment Date: September 23, 1983.

j. Competing Application: Project No. 7215. Date filed: 4/11/83. Public notice issued: 5/25/83.

k. Description of Project: The proposed project would consist of: (1) a 5-foot-high diversion structure at elevation of 1,421 feet; (2) a 54-inch-diameter, 9,600-foot-long penstock; (3) a powerhouse at elevation 956 feet containing a generating unit with a rated capacity of 4,266 kW; and (4) a 2-mile-long transmission line. The Applicant estimates a 19,000,000 kWh average annual energy production. A preliminary permit if issued does not authorize construction. The Applicant has requested a 36-month permit in which to conduct feasibility studies and prepare a license application at a cost of $75,000.00.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, D2.

9a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7276–000.

c. Date Filed: May 16, 1983.

d. Applicant: Donald S. Benson.

e. Name of Project: Fall Creek.

f. Location: On Fall Creek, near American Falls, in Power County, Idaho.

g. Filed Pursuant to: Energy Security Act of 1980, Secton 408, 16 U.S.C. 2705, and 2708 *as amended*.

h. Contact Person: Dale Hatch, Cook Electric Company, P.O. Box 1071, Twin Falls, Idaho 83301.

i. Comment Date: September 30, 1983.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high, 15-foot-long concrete diversion structure at elevation 4,390 feet; (2) a 5,000-foot-long, 30-inch-diameter steel penstock; (4) a powerhouse containing one generating unit rated at 150 kW; and (5) a transmission line. The average annual energy generation is estimated to be 1.2 million kWh.

k. Purpose of Project: Power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

10a. Type of Application: Minor License (5 MW or Less).

b. Project No: 7281–000.

c. Date Filed: May 16, 1983.

d. Applicant: Madera Irrigation District.

e. Name of Project: Lateral 6.2 Hydroelectric.

f. Location: On Bureau of Reclamation's Madera Canal in Madera County, California, near the town of Madera.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert L. Stanfield, General Manager-Chief Engineer, 12152 Road 28¼, Madera, California 93637.

i. Comment Date: October 17, 1983.

j. Description of Project: The proposed project would consist of: (1) five powerplants located at stations 61 + 26, 104 + 00, 162 + 00, 231 + 00, and 372 + 00, each plant containing a single generating unit with a combined rated capacity of 850 kW; and (2) five 1.25-mile-long transmission lines connecting the plants to an existing Pacific Gas and Electric Company transmission line. The estimated annual energy output would be 4,500,000 kWh.

k. Purpose of Project: Project power will be sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

m. Agency Comments: D1.

11a. Type of Application: Exemption (Small Conduit Facility).

b. Project No: 7283–000.

c. Date Filed: May 17, 1983.

d. Applicant: Calaveras Public Utility District.

e. Name of Project: CPUD Pipeline Hydroelectric.

f. Location: On Applicant's water supply distribution pipeline system which receives its water from the Jeff Davis Reservoir, near the town of Mokelumne Hill in Calaveras County, California.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Ms. Sally Lewis, Secretary-Manager, Calaveras Public Utility District, P.O. Box 666, San Adreas, California 95249.

i. Comment Date: September 30, 1983.

j. Description of Project: The proposed project would consist of: (1) three powerhouses located on the existing pipeline system, at stations 236 + 25, 376 + 65 and 608 + 90, each containing

two generating units with a combined rated capacity of 250 kW; and (2) connections to an existing 12-kV Pacific Gas and Electric Company transmission line. The estimated average annual energy output for the project would be 1,000,000 kWh.

Purpose of Exemption.—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power will be sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

m. Agency Comments: D3b.

12a. Type of Application: Preliminary Permit.

b. Project No: 7287–000.

c. Date Filed: May 17, 1983.

d. Applicant: Hamilton Associates.

e. Name of Project: Hamilton Project.

f. Location: Skagit County, Washington, on Cumberland Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Rector, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: October 17, 1983.

j. Description of Project: The proposed project would consist of the following features: (1) a 5.5-foot-high concrete diversion weir at an elevation of 1800 feet; (2) a 900-foot-long pipeline and penstock; (3) a surge tank; (4) a powerhouse containing a 500-kW generating unit; (5) a tailrace discharging flows back into Cumberland Creek at elevation 300 feet; and (6) a 0.75-mile-long transmission line. Applicant estimates an average annual energy production of 21.3 million kWh.

k. Purpose of Project: Project power will be sold to surrounding northern Washington electric systems.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

13a. Type of Application: Preliminary Permit.

b. Project No: 7292–000.

c. Date Filed: May 17, 1983.

d. Applicant: Umatilla Associates.

e. Name of Project: Umatilla Power Project.

f. Location: On Umatilla River, in Umatilla County, near the town of Umatilla, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Tom Forbes P.O. Box 421, Mercer Island, WA 98040, with a copy to: Joel Rector, Esquire, 4832 Colony Circle, Salt Lake City, Ut 84117.

i. Comment Date: October 17, 1983.

j. Description of Project: The proposed project would consist of two developments. Development No. 1 would consist of a powerhouse at the base of the Bureau of Reclamation's existing Threemile Falls Diversion Dam. The powerhouse would have a rated capacity of 2,500 kW, operating under a head of 23 feet and producing about 4 million kWhs. The project would be connected to either the existing Umatilla Electric Cooperative transmission line adjacent to the project site, or to an existing Pacific Power & Light Company's line within 2 miles of the project site. Development No. 2 would consist of: (1) an intake structure on the West Extension Irrigation Canal; (2) an 84-inch-diameter, 800-foot-long penstock leading to: (3) a powerhouse to contain two turbine-generating units with a total rated capacity of 3,700 kW, operating under a head of 135 feet and producing about 6.3 million kWhs. The project would be connected to an existing Pacific Power & Light Company substation adjacent to the development site. the Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and preparing an FERC license application. No new road would be required to conduct the studies. Applciant estimates the cost of the studies to be about $125,000.

k. Purpose of Project: The Applicant proposes to sell the project power to a nearby utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2..

14a. Type of Application: Exemption (5MW or Less).

b. Project No: 7318–000.

c. Date Filed: May 26, 1983.

d. Applicant: Consolidated Power Company.

e. Name of Project: Kirtley—York.

f. Location: On Big Wood River in Blaine County, Idaho.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Ted C. Divine, President, Rotomatic Irrigation, Inc., P.O. Box 133, Bellevue, Idaho 83313.

i. Comment Date: October 3, 1983.

j. Description of Project: The proposed project would consist of: (1) a 3-foot-high diversion structure at elevation 5,256 feet; (2) a 150-foot-wide, 5-foot-deep, 6,000-foot-long feeder canal; (3) a surge pond with a gross storage capacity of 2-acre-feet; (4) two 80-inch-diameter, 93-foot-long penstocks; (5) a powerhouse at elevation 5,223 feet containing a generating unit with a rated capacity of 600 kW; and (6) a 300-foot-long transmission line. The average annual energy generation is estimated to be 3,350,000 kWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

15a. Type of Application: Exemption (5MW or Less).

b. Project No: 7326–000.

c. Date Filed: June 1, 1983.

d. Applicant: China Flat Company.

e. Name of Project: China Flat.

f. Location: On China Creek partially within Six Rivers National Forest in Humboldt County, California.

g. Filed Purauant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Albert E. Hodgson, China Flat Company, P.O. Box 269, Willow Greek, California 95573.

i. Comment Date: September 26, 1983.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high diversion structure at elevation 1,400 feet; (2) an 18-inch-diameter, 4,000-foot-long penstock; (3) a powerhouse at elevation 560 feet containing a generating unit with a rate capacity of 640 kW; and (4) a 100-foot-long transmission line. The average annual energy generation is estimated to be 1.4 MWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.

16a. Type of Application: Preliminary Permit.

b. Project No: 7343–000.

c. Date Filed: June 6, 1983.

d. Applicant: Birch Creek Hydro, Inc.

e. Name of Project: North Fork Oak Creek.

f. Location: On North Fork Oak Creek, near Independence, in Inyo County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas Miller, Birch Creek Hydro, Inc., 2210 Wilshire Blvd., #789, Santa Monica, California 90403.

i. Comment Date: October 17, 1983.

j. Description of Project: The proposed project would consist of: (1) a 20 to 30-foot-high, 400-foot-long, diversion structure at elevation 6020 feet, providing 35 acre-feet of pondage; (2) a 3-foot-diameter, 15,500-foot-long combination pipeline/penstock; (3) a powerhouse containing dual turbine-generator units with a total installed capacity of 3.0 MW and an average annual generation of 12.66 GWh; and (4) 0.25 miles of transmission line. Project

power would be sold to Southern California Edison Company. The project would be located within the Inyo National Forest.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $201,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

17a. Type of Application: Preliminary Permit.

b. Project No: 7403–000.

c. Date Filed: June 24, 1983.

d. Applicant: Town of Wilmington, New York.

e. Name of Project: Wilmington Water Power Project.

f. Location: On the Ausable River in Essex County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Donal S. DeMacy, Supervisor, Town Hall, Wilmington, New York 12997.

i. Comment Date: September 23, 1983.

j. Competing Application: Project No. 7095–000; Date Filed: February 22, 1983.

k. Description of Project: The proposed run-of-river project would consist of: (1) an existing concrete dam, 230 feet long and 16 feet high, with an ogee spillway section; (2) a reservoir having minimal pondage; (3) an existing intake structure and short penstock, at the left dam abutment, leading to; (4) a new powerhouse containing 2 turbine-generator units rated at 180 kW each for a total rated capacity of 360 kW; (5) a tailrace returning flow to the river approximately 70 feet downstream of the dam; (6) a new 17.4–kW transmission line, approximately 200 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,600,000 kWh. Project energy would be sold to the New York State Electric & Gas Company, the Applicant states that the existing dam and other project facilities are owned by the Town of Wilmington, New York.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

18a. Type of Application: Preliminary Permit.

b. Project No: 7407–000.

c. Date Filed: June 27, 1983.

d. Applicant: China Flat Company.

e. Name of Project: Ruby Creek.

f. Location: On Ruby Creek, near Willow Creek, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Albert E. Hodgson, China Flat Company, P.O. Box 269, Willow Creek, California 95573.

i. Comment Date: October 21, 1983.

j. Description of Project: The proposed run-of-river project would consist of: (1) a 4-foot-high, 40-foot-long, diversion structure at elevation 2400 feet; (2) a 24-inch-diameter, 4,000-foot-long pipeline; (3) an 18-inch-diameter, 1,000-foot-long penstock; (4) a powerhouse with a total installed capacity of 210 kW and an average annual generation of 1.8 GWh; and (5) 300 feet of 12.5-kV transmission line. Project power would be sold to Pacific Gas and Electric Company. The project will impact lands of the Six Rivers National Forest.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of construction and operating the project and estimates the cost of the studies at $10,000 to $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

19a. Type of Application: Preliminary Permit.

b. Project No: 7416–000.

c. Date Filed: July 1, 1983.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Fall Creek.

f. Location: On Fall Creek in Nevada County, California within the Tahoe National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kirk Rector, Sr., V.P. Diversified Products, CFS, Suite 500, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: October 3, 1983.

j. Competing Application: Project No. 6967–000; Date Filed December 27, 1982. Notice issued April 4, 1983.

k. Description of Project: The proposed project would consist of: (1) a diversion structure at elevation 5,188 feet; (2) a 36-inch-diameter, 5,287-foot-long buried pressure pipeline; (3) a 24-inch-diameter, 3,300-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 4,900 kW, operating under a head of 2,000 feet; and (5) a 1-mile-long, 69-kV transmission line tying into an existing Pacific Gas and Electric Company line. The estimated average annual energy output would be 11 million kWh.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $50,000.

l. Purpose of Project: Project power will be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C.

n. Agency Comments: D2.

20a. Type of Application: Preliminary Permit.

b. Project No: 7468–000.

c. Date Filed: July 28, 1983.

d. Applicant: Kentucky Hydro Associates.

e. Name of Project: Taylorsville Dam Hydroelectric Project.

f. Location: Spencer County, Kentucky, Salt River.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce J. Wrobel, Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116.

i. Comment Date: October 24, 1983.

j. Description of Project: The proposed project would utilize a U.S. Army Corps of Engineers' dam and reservoir. Project No. 7468 would consist of: (1) a proposed extension of the existing outlet works at the dam with the installation of a gated junction chamber which would allow for the diversion of water; (2) the proposed installation of a vertical slide gate to control the flow of diverted water into a proposed 400-foot-long; 10-foot-diameter penstock; (3) a proposed powerhouse containing two turbine/generator units with a total installed capacity of 6.4 MW; (4) a proposed tailrace channel approximately 900 feet long; (5) a proposed transmission line approximately four miles in length; and (6) appurtenant facilities. Applicant estimates the average annual energy production to be 15.0 GWh.

k. Purpose of Project: The Applicant plans to sell the power generated at the site to the Kentucky Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit.*—A preliminary permit, if issued,

does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $70,000.

n. *Purpose of Preliminary Permit.*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

21a. Type of Application: Preliminary Permit.

b. Project No: 7372–000.

c. Date Filed: May 15, 1983.

d. Applicant: Fluid Energy Systems, Inc.

e. Name of Project: South Fork Kern River Hydroelectric Power Project.

f. Location: On the South Fork Kern River, 15 and 19 miles northeast of Isabella Lake near the Town of Kernville, in Tulare County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: K. Thomas Miller, President, Fluid Energy Systems, Inc., 2210 Wilshire Blvd. No. 699, Santa Monica, California 90403.

i. Comment Date: October 12, 1983.

j. Description of Project: The proposed project would consist of two developments, Mile 43 and Ball Mountain. The Mile 43 development would consist of: (1) a 60- to 80-foot-high concrete earthfill dam; (2) a 28-acre reservoir with a storage capacity of 1,100 acre-feet at normal reservoir elevation of 5,840 feet; (3) a 9,500-foot-long, 6-foot-diameter buried pipeline/penstock to the new powerhouse; (4) a powerhouse containing two generating units with a total installed capacity of 2,950 kW and tailrace; and (5) a 12.5-mile-long transmission line. The average annual energy output will be 13 million kWh. The Ball Mountain development would consist of: (1) a 60- to 80-foot-high concrete earthfill dam; (2) a 9-acre reservoir with a storage capacity of 348 acre-feet at normal reservoir elevation of 6,800 feet; (3) a 17,200-foot-long, 6-foot-diameter buried pipeline to the powerhouse; (4) a powerhouse with two generating units with a total installed capacity of 9,298 kW and tailrace; and (5) a 7.8-mile-long transmission line to the Mile 43 development. The average annual energy output of the Ball Mountain development will be approximately 41.1 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering, environmental, and feasibility studies and prepare an FERC license application at a cost of $450,000. No new roads would be required to conduct the studies. Each development will require 6 earth core samples and 2 excavated trenches in the vicinity of the powerhouse, pipelines, and dams. These excavations will be refilled and the surrounding area restored to its original state.

k. Purpose of Project: Project power will be sold to Southern California Edison Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

22a. Type of Application: Exemption.

b. Project No: 5130–001.

c. Date Filed: June 2, 1983.

d. Applicant: Floyd N. Bidwell.

e. Name of Project: Lost Creek #II.

f. Location: On Lost Creek partly within the Lassen National Forest in Shasta County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Louis J. Simpson, 2704 Hartnell, Suite C, Redding, California 96002.

i. Comment Date: September 19, 1983.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high diversion structure at elevation 2,845 feet; (2) a 2,000-foot-long, 57-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 455 kW, operating under a head of 85 feet; and (4) a 2,500-foot-long, 12-kV transmission line.

k. Purpose of Project: The estimated 3.36 million kWh of project energy would be sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

23a. Type of Application: Exemption from Licensing.

b. Project No: 6944–000.

c. Date Filed: December 17, 1982.

d. Applicant: Douglas Water Power Company.

e. Name of Project: Cripple Creek Water Power Project.

f. Location: On Cripple Creek & South Fork Cripple Creek, near Estacada, in Clackamas County, Oregon.

g. Filed Pursuant to: Section 408 of the Energy Security Act, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Douglas Pegar, Douglas Water Power Company, 540 East First Street, Gladstone, OR 97027 with a copy to Craig Scott, 2550 S.E. 9th Court, Gresham, Oregon 97030.

i. Comment Date: September 21, 1983.

j. Competing Application: Project No. 6200. Application filed on April 8, 1982. Notice of the application was issued on June 14, 1982, and expired on August 19, 1982.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) an intake structure on South Fork Cripple Creek at elevation 4,100 feet connected to; (2) a 13,500-foot-long, 24-inch-diameter steel penstock; (3) two additional intake structures located on Cripple Creek and South Fork Cripple Creek at elevation 2,050 feet, each connected to: (4) a 24-inch-diameter steel penstock, one 2,000 feet long and the other 2,200 feet long joining in a "wye" and continuing for an additional 900 feet; (5) a powerhouse to contain one 3–MW and two 0.4–MW generating units operating under heads of 2,100, 400 and 400 feet, respectively, and producing 13 million kWh of energy annually; and (6) a buried 300-foot-long, 13-kV transmission line to connect to an existing Portland General Electric Company transmission line.

l. Purpose of Project: The project energy will be sold to the Portland General Electric Company.

m. This notice also consists of the following standard paragraphs: A2, A9, B, C, D3a.

24a. Type of Application: Minor License.

b. Project No.: 7269–000.

c. Date Filed: March 14, 1983.

d. Applicant: James B. Boyd and Janet A. Boyd.

e. Name of Project: Jim Boyd Power Project.

f. Location: On Umatilla River, in Umatilla County, near Hermiston, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Philip P. W. Yates, Attorney at Law, Woodlard Building, Suite 500, 813 S.W. Alder Street, Portland, Oregon 97204.

i. Comment Date: October 12, 1983.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a diversion structure in the form of

30- to 36-inch-diameter boulders across the Umatilla River; (2) a 5,300-foot-long canal to transport the water to; (3) two 80-foot-long penstocks, 78 inches and 90 inches in diameters, leading to; (4) a powerhouse to contain two turbine-generating units with a total capacity of 1,095 kW, operating under a head of 30 feet and producing about 4.23 million kWhs; and (5) a 150-foot-long tap line to an existing Pacific Power & Light Company transmission line. Applicant estimates the cost of the project to be about $1.12 million.

k. Purpose of Project: The applicant has proposed to sell the project power to the Pacific Power & Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D2.

25a. Type of Application: Major License (over 5 MW).

b. Project No.: 2908–001.

c. Date Filed: June 14, 1983.

d. Applicant: Town of New Roads, Louisiana.

e. Name of Project: Lock and Dam No. 3.

f. Location: Near the town of Colfax, Grant, Natchitoches and Rapides Parishes, Louisiana, on the Red River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: J. B. Lancaster, Jr., V.P., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: October 17, 1983.

j. Description of Project: The proposed project would be located at the proposed U.S. Army Corps of Engineers Lock and Dam #3 of the Red River Waterway Project. The proposed hydroelectric facility would consist of a new powerhouse containing three turbine-generators with a total rated capacity of 54 MW built integrally to the south abutment of the Corps' proposed gated spillway structure, a tailrace channel, a switchyard and a 1-mile-long 230-kV transmission line. The transmission line would be connected to an existing Central Louisiana Electric Company transmission line. The Applicant plans to construct the project concurrently with the Corps' construction of Lock and Dam #3. The project would generate up to 231,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to the Louisiana Energy and Power Authority. This application was filed during the term of the preliminary permit issued to the Town of New Roads, FERC Project No. 2908–000.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

26a. Type of Applications: Exemption from Licensing (5 MW or Less Capacity).

b. Project No.: 7052–000.

c. Date Filed: February 2, 1983.

d. Applicant: City of Portland, Oregon.

e. Name of Project: Ground Water Pumping Station.

f. Location: Multnomah County, Oregon; Powell Butte Reservoir.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: James Doane, Asst. Chief Engineer, Bureau of Water Works, 1800 S.W. 6th Avenue, Portland, Oregon 97201.

i. Comment Date: September 16, 1983.

j. Description of Project: The proposed project would utilize three existing water supply conduits carrying water from an existing diversion dam at elevation 749 feet and consist of: (1) a powerhouse containing six pump-turbines with a total installed capacity of 4,500 kW; and (2) a switchyard.

k. Purpose of Project: The proposed project would operate as a pumping station during low flow periods, pumping water into an existing 50 million gallon Powell Butte storage reservoir. However, during the surplus flow duration, the water would flow from the reservoir to the proposed project, generating power which would be used by the City of Portland in operation of its water supply system.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

27a. Type of Application: Preliminary Permit.

b. Project No.: 7171–000.

c. Date Filed: March 23, 1983, revised on June 13, 1983.

d. Applicant: Town of Lake City, Colorado.

e. Name of Project: Henson Creek.

f. Location: Hinsdale County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Robert Hall, Mayor, Town of Lake City, Colorado, P.O. Box 409, Lake City, Colorado 81235.

i. Comment Date: October 7, 1983.

j. Description of Project: The proposed project would consist of five developments located on the following tributaries of Henson Creek: El Paso Creek, Nellie Creek, Modoc Creek, and Alpine Gulch. The developments proposed herein are all unconstructed and are described as follows:

(A) Site No. 1—Upper Capitol City Drop would consist of: (1) a concrete grated intake; (2) approximately one half mile of steel or concrete penstock with a diameter of 20 inches to 30 inches; (3) a steel or concrete powerhouse, 18 feet by 20 feet, housing one turbine unit with a rated capacity of 500 kW located on Henson Creek; (4) 600 feet of feeder transmission line at 14,400 volts; (5) a fenced transformer; and (6) appurtenant facilities. Applicant estimates that the average annual energy generation would be 1,400,000 kWh.

(B) Site No. 2—Lower Capitol City/El Paso Creek Drops would consist of: (1) two headgates, one on Henson Creek, the other on El Paso Creek; (2) approximately one half mile of penstocks, 36 inches to 48 inches in diameter servicing the Lower Capitol City Drop; and approximately 3,960 feet of penstock, 10 inches to 18 inches in diameter servicing the El Paso Creek Drop. The El Paso Creek Drop will have a log diversion structure and a grated trashrack at the penstock intake; (3) the powerhouse, located at the confluence of El Paso Creek and Henson Creek, will contain two turbine/generators with a total rated capacity of 1,250 kW; (4) 200 feet of feeder transmission line at 14,400 volts; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 3,500,000 kWh.

(C) Site No. 3—Nellie Creek Drop would consist of: (1) a grated headgate intake; (2) approximately one mile of penstock, 16 inches to 20 inches in diameter; (3) a powerhouse located at the confluence of Nellie Creek and Henson Creek housing one turbine/generator unit with a rated capacity of 750 kW; (4) a fenced transformer; (5) 100 feet of feeder transmission line at 14,400 volts; and (6) appurtenant facilities. Applicant estimates that the average annual energy generation would be 2,160,000 kWh.

(D) Site No. 4—Henson Townsite Drop would consist of: (1) a headgate; (2) approximately 7,290 feet of penstock, 48 inches in diameter; (3) a concrete diversion structure approximately 8 feet high and 20 feet long; (4) a powerhouse located approximately one mile below the Ute and Ulay damsite, with a minimum installed capacity of 1,000 kW; (5) a fenced transformer; (6) 100 feet of feeder transmission line at 14,400 volts; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 2,800,000 kWh.

(E) Site No. 5—Alpine Gulch Drop would consist of: (1) a gated intake structure; (2) approximately one mile of penstock, 14 inches to 18 inches in diameter; (3) a log diversion structure; (4) a powerhouse structure located at the confluence of Alpine Gulch and Henson Creek; (5) a fenced transformer;

(6) 100 feet of feeder transmission line at 14,400 volts; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 1,400,000 kWh.

k. Purpose of Project: The Applicant anticipates that Colorado Ute Electric Association would purchase or wheel the power to another purchaser. Interconnection would be with transmission lines of the Gunnison Electric Association (R.E.A.).

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $45,000.

28a. Type of Application: License (Major).

b. Project No.: 2491-003.

c. Date Filed: May 5, 1982 and amended on July 15, 1983.

d. Applicant: Northern States Power Company.

e. Name of Project: Jim Falls Project.

f. Location: On the Chippewa River in Chippewa County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. E. M. Theisen, President, Northern State Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, Wisconsin 54702 and Mr. William J. Madden, Jr., Esq., Debevoise and Liberman, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

i. Comment Date: October 7, 1983.

j. Description of Project: The existing project is a single development with a nominal head of 55 feet and utilizes the existing Jim Falls Dam with its impound reservoir known as Old Abe Lake. The project consists of: (1) a 9,500-foot-long diversion dam with earth dikes and spillway control structures; (2) a 4,300-foot-long power canal, excluding the intake portion, with associated canal headworks; (3) three steel penstocks with associated penstock headworks and surge spillway; (4) a powerhouse containing three identical turbine-generator units, each with a generator rating of 6,000 kilovolt-amperes but limited by the turbine rating of 4,800 horsepower at a 50-foot net head and rated speed; (5) a reservoir and power canal having a normal full water level elevation of 953.2 feet—National Geodetic Vertial Datum (NGVD) with a maximum total water surface area of 890 acres and a gross storage capacity of 10,700 acre-feet at that elevation; and (6) appurtenant facilities. The proposed redeveloped project will also develop a nominal head of 55 feet. It will consist of: (1) an 8,700-foot-long dam utilizing some of the existing earth dikes, the existing spillway control structures, and a new auxiliary spillway control structure; (2) a new powerhouse containing three identical main turbine-generator units, each with a rating of 16,000-kW as a replacement for the existing powerhouse; (3) an additional new small powerhouse at the existing spillway control structures containing a single turbine-generator unit with a rating of 600-kw to provide a minimum flow release for the bypassed section of river channel; (4) a slightly enlarged reservoir replacing the power canal concept of diversion with a maximum water surface area of 950 acres and a gross storage capacity of 11,400 acre-feet while retaining the existing normal full water level elevation of 953.2 feet—NGVD; and (5) appurtenant facilities.

Construction of the proposed redevelopment will require relocation of a portion of Chippewa County Highway "Y" located between its intersection with Wisconsin State Trunk Highway 178, on the right bank of the Chippewa River, and its intersection with Chippewa County Trunk Highway "S" adjacent to the left bank of the existing power canal, in the community of Jim Falls. This new highway section will be about 1,300 feet long and will include an 810-foot-long bridge across the river and the new powerhouse tailrace channels. The existing highway section will then be abandoned and its two bridges will be removed. The Applicant estimates that the average annual energy output of the redeveloped project would be 136.5 GWh.

The proposed project will occupy approximately 13 acres of Federal land.

k. Purpose of Project: To increase the power production at the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

29a. Type of Application: Preliminary Permit.

b. Project No: 7425-000.

c. Date Filed: July 5, 1983.

d. Applicant: Mississippi Power and Light Company.

e. Name of Project: Ross Barnett Reservoir Hydroelectric Project.

f. Location: Pearl River, in Rankin and Madison Counties, Mississippi.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. W. L. Nail, Jr., Mississippi Power and Light Company, P.O. Box 1640, Jackson, Mississippi 39205.

i. Comment Date: October 11, 1983.

j. Description of Project: The proposed project would consist of: (1) an existing 20-foot-high, 13,000-foot-long earthfill dam; (2) an existing reservoir with a total storage capacity of 450,000 acre-feet; (3) a proposed 1.2 MW hydroelectric unit located in a drainage ditch near two existing water supply tubes 4,000 feet northwest of the existing spillway and consisting of a foundation, turbine discharge flume, velocity suppression pool, and discharge wier; (4) a proposed 8.0 MW hydroelectric unit located 5,000 southeast of the existing spillway and approximately 300 feet below the dam and consisting of a 390-foot-long penstock and a 6,000-foot-long discharge channel; (5) a total installed generation capacity of 9.2 MW with an estimated annual power generation of 34.4 GWh; (6) proposed transmission lines less than 3 miles in length; and (7) appurtenant facilities.

k. Purpose of Project: Applicant will utilize the electricity generated at the proposed project by making it available through the Applicant's existing transmission and distribution facilities to industrial, commercial, and private customers.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $250,000.

n. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the

proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

30a. Type of Application: License (under 5 MW).

b. Project No: 7175–000.

c. Date Filed: March 1, 1983.

d. Applicant: Wyoming Hydro, Inc.

e. Name of Project: Woodruff Narrows.

f. Location: Bear River in Uinta County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jay Bingham, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: October 8, 1983.

j. Description of Project: The proposed project would be located, in part, on U.S. lands administered by the Bureau of Land Management and would consist of the following: (1) an existing 620-foot-long, 65-foot-high earthen dam owned by the State of Utah; (2) an existing 2,312 acre reservoir with a gross volume of 57,300 acre-feet; (3) a proposed 160-foot-wide, 500-foot-long open channel leading to; (4) three proposed diversion works consisting of retaining walls and sluice gates; (5) a proposed 96 to 102-inch-diameter, 3,600-foot-long, steel penstock; (6) a proposed powerhouse operating under a head of 80 feet, containing two turbine; generator units with a total capacity of 2,500 kW; (7) a proposed 35-foot-wide, 400-foot-long outlet channel; (8) reconstruction of a 1,600-foot-long portion of the Francis-Lee Canal; (9) a proposed 35-foot-long, 12–kV transmission line; (10) a proposed 1-mile-long, 12–kV transmission line; and (11) appurtenant facilities. The estimated average annual energy is 7,011 MWh.

k. Purpose of Project: Project energy would be sold to Utah Power & Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

31a. Type of Application: Preliminary Permit.

b. Project No: 7289–000.

c. Date Filed: May 17, 1983.

d. Applicant: Juntura Associates.

e. Name of Project: Juntura Power Project.

f. Location: On Malheur River, in Malheur County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, WA 98040, with a copy to: Joel Rector, Esquire, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: October 7, 1983.

j. Description of Project: The proposed project would be located at the base of the U.S. Bureau of Reclamation's existing Warmspring Dam and would consist of a powerhouse with a total rated capacity of 3 MW producing approximately 7 million kWh annually. A 0.5-mile-long, 12.5–kV transmission line would connect the project to Pacific Power & Light Company's facilities. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and to prepare an FERC license application. No new road would be required to conduct the studies. The estimated cost of conducting the studies is about $125,000.

k. Purpose of Project: The project power would be sold to either the Pacific Power & Light Company or the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

32a. Type of Application: Preliminary Permit.

b. Project No: 7359–000.

c. Date Filed: June 13, 1983.

d. Applicant: Figas Construction.

e. Name of Project: Slate Creek.

f. Location: Humboldt County, California; Slate Creek.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert Figas, Figas, Construction, 115 Redmond Road, Eureka, California 95501.

i. Comment Date: October 14, 1983.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high diversion structure at elevation 1000 feet; (2) a 7,000-foot-long, 30-inch-diameter low pressure conduit; (3) a 500-foot-long, 18-inch-diameter penstock; (4) a powerhouse with a total installed capacity of 500 kW; and (5) a 2-mile-long, 12.5–kV transmissiion line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. A preliminary permit does not authorize construction. The Applicant seeks a 36-month permit to study feasibility of constructing and operating the project. These studies would not reqwuire require construction of any new roads and are estimated to cost $15,000. The proposed project would affect United States lands within the Six Rivers National Forest.

k. The estimated 4.4 million KWh produced annually by the proposed project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

33a. Type of Application: Amendment of License.

b. Project No: 2085–002.

c. Date Filed: July 30, 1982.

d. Applicant: Southern California Edison Company.

e. Name of Project: Mammoth Pool Water Power Project.

f. Location: Mammoth Pool Dam on San Joaquin River, within Sierra National Forest, in Madera and Fresno Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John R. Bury, Vice President and General Counsel, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

i. Comment Date: September 19, 1983.

j. Description of Project: The proposed development to be located at Southern California Edison Company's Mammoth Pool Dam would consist of: (1) eight 25-foot-high, 45-foot-wide radial gates raising the elevation of the Mammoth Pool Reservoir level from 3,300 feet to 3,355 feet; (2) a 5-foot-high, 820-foot-long concrete parapet wall; and (3) a powerhouse to contain two generating units with a total rated capacity of 4,000 kW. Applicant estimates that average annual energy generation would be 35.3 million kWh.

k. This notice also consists of the following standard paragrahs: B, C and D1.

34a. Type of Application: License Major.

b. Project No: 7114–000.

c. Date Filed: February 28, 1983.

d. Applicant: Alaska Power Authority.

e. Name of Project: Susitna.

f. Location: On the Susitna River between Anchorage and Fairbanks, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert A. Mohn, Project Manager, Alaska Power Authority, 34 West 5th Avenue, Anchorage, Alaska 99501 with a copy to: D. Jane Drennan, Pillsbury, Madison & Sutro, Suite 900, 1050 Seventeenth Street, NW., Washington, D.C. 20036.

i. Comment Date: October 11, 1983.

j. Description of Project: The proposed project would consist of two developments with a total installed capacity of 1,620 MW and would provide an average of 6910 GWh of energy annually when completed in the year of 2002.

The upstream Watana Development would include an 885 foot-high earthfill dam with a crest length of 4,100 feet forming a 48 mile-long reservoir with a surface area of 38,000 acres and a usable storage capacity of 3.7 million acre-feet at normal maximum water surface elevation 2,185 feet. Two chute spillways would be provided on the

right abutment. A concrete, gated intake structure on the right abutment would lead to six 17 foot-diameter penstocks terminating in an underground powerhouse containing six 170 MW generating units. The first four units would come on line in January 1994, followed in July 1994 by the final two units. The Watana Development would produce an average annual energy output of 3,460 GWh.

The Devil Canyon Development would include a 645 foot-high, double-curved, concrete thin arch dam forming a 26-mile-long reservoir with a surface area of 7,800 acres and a usable storage capacity of 350,000 acre-feet at normal maximum water surface elevation 1,455 feet. A 245 foot-high, rock-fill saddle dam would be located on the left abutment. A spillway would be provided on each abutment. A concrete, gated intake structure on the right abutment would lead to four 20 foot-diameter penstocks terminating in an underground powerhouse containing four 150 MW generating units. The Devil Canyon Development would become operational in 2002 and would produce an average annual energy output of 3,450 GWh.

Two 28 mile-long, 345 kV transmission lines would be constructed from Watana to Devil Canyon. From Devil Canyon, two 195 mile-long, 345 kV transmission lines would extent to Anchorage. An access road would be constructed from the Denali Highway south to Watana and then west to Devil Canyon. A 6,000 foot-long airstrip and a permanent town for operation and maintenance personnel would be constructed at Watana. The Susitna Hydroelectric Project is estimated to cost 5.1 billion dollars (January 1982 dollars).

k. Purpose of Project: Energy will be sold to various Railbelt utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

n. *Notice of Intent To Prepare Environmental Impact Statement*—The Commission's staff has determined that issuance of a license for the proposed hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement in accordance with the National Environmental Policy Act. Possible alternatives to the proposed action will be addressed.

o. *Alaska Coastal Management Program*—The Division of Policy and Development and Planning, State of Alaska, is reviewing this project for consistency with the approved Alaska Coastal Management Program (ACMP). Comments concerning the ACMP should be sent to: State Clearinghouse, Office of the Governor, Pouch AW, Juneau, AK 99811.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notice of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days

after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385 .210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined

to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Dated: August 17, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-23002 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-673-005]

Kentucky Utilities Co.; Refund Report

August 16, 1983.

Take notice that on August 1, 1983, Kentucky Utilities Company, ("KUC"), submitted for filing a Refund Report pursuant to the Commission's Letter Order of July 8, 1983, in Docket No. ER82-673-005.

The Company states that it has made refunds to Old Dominion Power Company, the City of Paris and the Municipals, including Berea College, and Jackson Purchase Electric Cooperative Corporation.

KUC further states that copies have been sent to the Public Service Commission of Kentucky and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before August 26, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-22988 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-457-000]

Michigan Wisconsin Pipe Line Co. and United Gas Pipe Line Co.; Application

August 17, 1983.

Take notice that on August 4, 1983, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), One Woodward Avenue, Detroit, Michigan 48226, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-457-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to exchange natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application indicates that in accordance with the terms and conditions set forth in a gas purchase contract dated October 30, 1980, between Exxon Corporation (Exxon), as seller, and Michigan Wisconsin, as buyer, Michigan Wisconsin acquired the right to purchase Exxon's gas reserves underlying the Y RD SU A Weeks Island Field, Iberia and St. Mary Parishes, Louisiana. Michigan Wisconsin states that the Weeks Island Field is remotely located relative to its pipeline facilities but is presently interconnected with the pipeline facilities of United at an existing meter and regulating station located near the William No. 1 well in Iberia Parish, Louisiana. To effectuate receipt of the gas supplies purchased from Exxon, Michigan Wisconsin states that it has entered into an exchange agreement with United dated as of May 17, 1982. The application indicates that the exchange agreement provides that Michigan Wisconsin can deliver up to 10,000 Mcf of gas per day to United, and United in turn would redeliver equivalent quantites of gas to Michigan Wisconsin at the northerly terminus of the pipeline facilities of High Island Offshore System in West Cameron Area Block 167, offshore Louisiana. Applicants state that no charge would be made by either party since the exchange of gas is mutually beneficial to both parties. The application further indicates that the term of the exchange agreement is for ten years commencing from the date of initial deliveries.

Any person desiring to be heard or to make any protect with reference to said application should on or before September 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, futher 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. 83-22989 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-416-000]

Montana-Dakota Utilities Co.; Petition for Waiver of Regulations

August 17, 1983.

Take notice that on July 11, 1983, Montana-Dakota Utilities Co. (Petitioner), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP83-416-000 a petition pursuant to § 157.52 of the Commission's Regulations for waiver of the requirements of § 157.50 of the Commission's Regulations, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that in late 1980, MIGC, Inc. (MIGC) requested Petitioner to increase deliveries of gas under an existing exchange agreement. It is stated that MIGC informed Petitioner that the additional volumes were necessary to meet high-priority requirements in excess of its available gas supplies. It is further stated that to alleviate this situation, Petitioner increased deliveries from its system supply to MIGC in December of 1980, notwithstanding the fact that such deliveries would result in an imbalance under the existing exchange agreement. Petitioner asserts that MIGC's supply shortages persisted to the extent that by December of 1981, Petitioner had delivered 570,800 Mcf of natural gas over and above the volumes returned by MIGC pursuant to the exchange agreement. It is further asserted that at the same time, MIGC informed Petitioner that, becasue of continuing supply shortages, it was incapable of delivering the volumes necessary to satisfy its exchange obligations to Petitioner. It is stated that instead MIGC requested that Petitioner treat the surplus exchange volumes as an emergency sales. Further, it is stated that MIGC tendered a check in the amount of $1,838,849.32 to compensate Petitioner for the exchange gas sold. Petitioner states that during the period when excess deliveries were made to MIGC, Petitioner did not attain the sales level upon which its rates were predicated and that as a direct consequence, it did not recover its cost of service during the twelve months ending December 31, 1981. Petitioner seeks a Commission order which would waive the requirements of § 157.20 and permit Applicant to credit Account 495, Other Gas Revenues, with the amount of $431,941.48 and thereby allow recovery of some of Petitioner's shortfall in revenues.

It is stated that from January 1, 1981, through July 1, 1983, inclusive, Petitioner's jurisdictional rates were based on rates filed and accepted by the Commission in Docket No. RP80-96 and that commencing July 2, 1981, and continuing for the remainder of the calendar year, Petitioner's jurisdictional rates changed to those approved by the Commission in the settlement of the proceeding in Docket No. RP81-71-000. Hence, it is asserted, for 1981, the volumetric comparisons which follow reflect the jurisdictional sales volumes for January through June upon which the Docket No. RP80-96 rates were predicated, and the jurisdictional sales volumes for July through December which were the basis of the Docket No. RP81-71-000 settlement rates. Petitioner states that its approved and effective rates for calendar year 1981 were based on aggregate jurisdictional sales of 1,691,573 Mcf of natural gas and that because of factors beyond Petitioner's control such as mild winter temperatures, conservation, depressed economic activity, and customer conversions to other fuels, Petitioner's actual jurisdictional sales amounted to only 1,119,045 Mcf of natural gas. Thus, it is asserted, actual jurisdictional sales in calendar year 1981 were 572,528 Mcf less than, or only about 66 percent of, the volumes upon which the approved rates were predicated. As a result, it is further asserted, Petitioner did not recover its entire jurisdictional cost of service.

Petitioner states that § 157.50 of the Commission's Regulations requires interstate pipelines to "* * * credit to Account 191 all revenues, received in excess of the sum of (1) the cost of purchased gas, plus (2) one cent per Mcf, for any such (emergency) volumes of natural gas transported, sold, or assigned." It is further stated that § 157.50 was apparently promulgated to prevent double-recovery of costs. It is asserted that a number of exceptions exist. Applicant submits that the instant emergency transaction meets the spirit of the exception set forth in § 157.50(d)(1).

Any person desiring to be heard or to make any protest with reference to said petition should on or before, September 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-22980 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-449-000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

August 16, 1983.

Take notice that on August 1, 1983, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP83-449-000 a request prusuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest proposes to construct and operate certain natural gas facilities under the authorization issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, to provide Western Slope Gas Company (Western Slope), an existing customer of Northwest, with an additional sales tap, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that by letter dated March 15, 1983, Western Slope requested that Northwest provide an additional sales delivery point, to be designated the Paraho sales tap located in Garfield County, Colorado. It is explained that the volumes of natural gas to be sold to Western Slope by means of the new tap would be within the certificated volumes which Northwest is authorized to sell and deliver to Western Slope. Northwest asserts that no increase in the total daily contract demand which Northwest is authorized to sell and deliver to Western Slope is proposed and that the volumes of natural gas to be sold through the Paraho sales tap, estimated to be 650 therms per day, would be reallocated from the existing Rifle delivery point.

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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-22991 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-673-000]

Pacific Power & Light Co.; Filing

August 17, 1983.

Take notice that on August 12, 1983, Pacific Power & Light Company (PP&L) tendered for filing PP&L's Revised Appendix 1 for the State of Idaho. The Revised Appendix 1 calculates an average system cost for the State of Idaho applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

PP&L further states that Bonneville Power Administration has adjusted PP&L's Average System Cost.

Jurisdiction	Filed rate (mills/kWh)	Adjusted rated (mills/kWh)
Idaho	25.84	25.48

Pacific requests an effective date of March 7, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were supplied to Bonneville, the Idaho Public Utilities Commission and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 1, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. [illegible],

Secretary.

[FR Doc. 83-22[illegible] Filed 8-19-83; 8:45 am]

BILLING CODE [illegible]-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 2417-2]

Control Techniques Guideline Document; VOC Emissions From Volatile Organic Liquid Storage in Floating anid Fixed Roof Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft document for public review.

SUMMARY: The draft Control Techniques Guideline (CTG) document for control of volatile organic compounds (VOC) emissions from volatile organic liquids (VOL) storage in floating and fixed roof tanks is available for public review and comment. This informational document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for VOC emissions from VOL storage in floating and fixed roof tanks.

DATES: Comments should be submitted, in duplicate if possible, to the Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. James Durham, on or before October 6, 1983.

ADDRESSES: Comments will be available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Chemicals and Petroleum Branch, Room 730, Emission Standards and Engineering Division, Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina.

Copies of the draft CTG document may be obtained by contacting the Environmental Research Library (MD-35), (919) 541-2777, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guidelines Series—Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks."

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, (919) 541-5671, Chemicals and Petroleum Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On March 17 and 18, 1981, the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) reviewed a preliminary draft CTG document for control of VOC emissions from VOL storage vessels. Nineteen comments were received from industry representatives and trade groups. This draft CTG document was prepared based on the evaluation of the public comments received at NAPCTAC, and consideration of supplemental emissions data test provided by the American Petroleum Institute (API). The API initiated a major internal floating roof tank emissions testing program in 1980. Many commenters suggested that the EPA delay the development of the CTG until new emissions test data from API were available. This program, and data analysis were completed in the latter half of 1982, and the data were made available to the EPA. The API testing program resolves issues concerning previous emissions test work done by the EPA and industry. After analysis and careful consideration of the test methodology employed by API and results obtained by API, the EPA has decided to utilize the new API data for the purposes of this CTG.

This CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. CTG documents are informational in nature and provide State and local air pollution control agencies with an initial information base for proceeding with their own analysis of RACT for specific stationary source categories of VOC emissions located within areas where an extension was granted to the attainment of the national ambient air quality standard for ozone. The CTG document reviews existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions from VOL storage vessels.

Under Executive Order 12291, the EPA must judge whether a rule is "major" and therefore subject to the requirements of a regulatory impact analysis. This CTG document is not a "rulemaking," rather it is a notice of availability. This notice and the draft CTG documents were submitted to the Office of Management and Budget (OMB) for review.

Dated: July 5, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-22493 Filed 8-19-83; 8:45 am]

BILLING CODE 6560-50-M

[OPRM-FRL 2419-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM–223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Grants Programs

Title: SBE/MBE/WBE Grants Utilization Report (EPA ID 0384).

abstract: State/local governments and businesses receiving Federal grants report quarterly on their utilization of small/minority/women's business enterprises (SBE/MBE/WBE). EPA uses the data to comply with statutory requirements, to develop plans/goals for this program, and to monitor performance to ensure that recipients award a "fair share" of subcontracts to these enterprises.

Respondents: State/local governments and businesses receiving Federal grants.

Toxics Programs

Title: Extension of Blanket Clearance for Human and Environmental Survey and Analysis Program (EPA ID 0786).

Abstract: EPA collects chemical residue and human exposure data in a variety of routine situations. The Agency uses the data to detect long-term trends in identifying potential problem areas and to evaluate overall program effectiveness.

Repondents: Individuals, businesses and farms.

Water Programs

National Pollutant Discharge Elimination System (NPDES)

These ICRs are all requests for re-approval of existing requirements; no changes are proposed. The permit authority is EPA or State agency in all cases.

Title: Request for Modification, Revocation and Reissuance, or Termination of Wastewater Permit (EPA ID 0029).

Abstract: Any interested person may request the permit authority to modify, revoke and reissue, or terminate an NPDES permit. The request must be written and contain facts/reasons (based on allowable causes detailed in 40 CFR 122.62 and 122.64) to support the request.

Repondents: Individuals, businesses, State and local governments, and other organizations.

Title: Information to Determine if Facility Is a New Source (EPA ID 0052).

Abstract: A permit applicant must indicate to the permit authority whether its facility is a "new source" as defined in the Clean Water Act. The respondent provides construction dates and explains the relationship between the new facility and its existing facilities. The permit authority uses the information to determine which effluent standards apply to that particular permit.

Respondents: Businesses and other institutions.

Title: Wastewater Permit Quarterly Noncompliance Report (EPA ID 0283).

Abstract: States delegated authority by EPA to administer the NPDES program must report to the Agency quarterly on significant instances of noncompliance, statistical data, and follow-up actions. EPA uses the data to evaluate the effectiveness of the States' enforcement, obtaining compliance, and overall NPDES program management, and to provide information to the public upon request.

Respondents: State water pollution control agencies.

Title: Wastewater Permittee Compliance Schedule Requests (EPA ID 0301).

Abstract: A respondent must provide written notification to the permit authority of compliance with specific permit requirements. Such notification typically includes attainment of milestones, final operating limits, and reports as specified by the permit authority. The authority uses the information to determine compliance with the permit and to decide whether follow-up actions (including enforcement proceedings) are necessary.

Respondents: Businesses and other institutions.

Air Programs

Title: Survey of Economic Costs of Guidance for Non-Ionizing Radiation (EPA ID 0987).

Abstract: EPA is developing Federal guidance to limit the exposure of the public to radiofrequency radiation. In order to analyze the economic impact of this guidance, the Agency is sending a questionnaire to a sample of American broadcasting facilities. (The ICR is a resubmittal.)

Respondents: Commercial broadcasting companies.

Title: Reporting and Recordkeeping of Ambient Air: Quality, Precision, Accuracy, and Related Data (EPA ID 0940).

Abstract: Respondents report data collected from the monitoring of several air pollutants and the data used in the assessment of precision. EPA uses this information to judge attainment of ambient standards, assess effectiveness of state control and QA programs, evaluate revisions of State Implementation Plans, develop national control policies and dispersion models, and perform new source reviews and trends assessments.

Respondents: State and local air pollution control agencies.

Title: Source Compliance and State Action Reporting (EPA ID 0107).

Abstract: Respondents provide in quarterly increments the annual compliance status for each major source of air pollution. They also supply information on State enforcement actions and inspections. EPA uses the information to assess progress in meeting air quality standards.

Respondents: State and local governments.

Title: National Emissions Data System Input Data Forms (EPA ID 0916).

Abstract: The NEDS and HATREMS data systems require updates on stationary sources whose emissions are regulated by national ambient standards. EPA uses the data to assess national emission trends and to develop emission standards, dispersion modeling analyses and various types of air quality impact analyses.

Respondents: State and local air quality agencies.

Comments on all parts of this notice should be sent to:

David Bowers (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460

and

Don Arbuckle, Vartkes Broussalian, or Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: August 16, 1983.

John Warren,

Acting Chief, Statistical Policy Staff.

[FR Doc. 83–22941 Filed 8–19–83; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of OMB No. 3067–0009 (Test).

Title: Disaster Assistance Registration Form (Test).

Abstract: This form is to be tested and if successful will replace 4 forms currently in use with a substantial decrease in total number of burden hours. The information collected is required to facilitate the delivery of disaster assistance to respondents.

Type of respondents: Individuals or Households.

Number of respondents: 2,000.

Burden hours: 1,500.

OMB Desk Officer: Ken Allen (202) 395–3786.

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287–9906, Federal Plaza Center, 500 C. Street, SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection package should be sent to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C. Street, SW., Washington, D.C. 20472 and to Ken Allen, Desk Officer, OMB, Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 9, 1983.

Walter A. Girstantas,

Assistant Associate Director Administrative Support.

[FR Doc. 83-22936 Filed 8-19-83; 8:45 am]

BILLING CODE 6718-01-M

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of OMB No. 3067–0018.

Title: National Flood Insurance Program Annual Report.

Abstract: The Federal Emergency Management Agency requires that communities participating in the National Flood Insurance Program submit an annual report on progress made in local flood plain management. The use of a simple, standard format facilitates FEMA's reporting of responses thus enhancing the reports' value as a management tool. (Form required by 44 CFR Chpt. 1, SubChpt. B Part 59.22).

Type of respondents: State or Local Governments.

Number of respondents: 8,650.

Burden hours: 4,325.

OMB Desk Officer: Ken Allen (202) 395–3786.

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287–9906, Federal Plaza Center, 500 C. Street, SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection package should be sent to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C. Street, SW., Washington, D.C. 20472 and to Ken Allen, Desk Officer, OMB, Reports Management Branch Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 10, 1983.

Walter A. Girstantas,

Assistant Association Director, Administrative Support.

[FR Doc. 83-20937 Filed 8-19-83; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-684-DR]

Illinois; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Illinois (FEMA–684–DR), dated June 6, 1983, and related determinations.

DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management agency, Washington, D.C. 20472 (202) 287–0501.

Notice: The notice of a major disaster for the State of Illinois dated June 6, 1983, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1983.

The Lebanon Community Unit School District Number 9 in St. Clair County is designated eligible for Federal assistance to disaster-damaged public schools under Pub. L. 81–815 and Pub. L. 81–874, as appropriate.

(Catalog of Federal Domestic Assistance No. 83–516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Ag

[FR Doc. 83-22900 Filed 8-19-83; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T–4007–2.

Title: Board of Trustees of the Galveston Wharves and Southern Stevedoring Company, Inc. Terminal Lease Agreement Amendment.

Parties: Board of Trustees of the Galveston Wharves (Lessor) and Southern Stevedoring Company, Inc. (Lessee).

Synopsis: Agreement No. T–4007–2 amends the basic lease agreement between the parties by exercising Lessee's option for one additional year through April 8, 1984, and further extends the term beyond that date to April 8, 1989. It also provides that Lessor shall have the right to renegotiate rental at any time during the term of the lease; defines responsibility for repairs and

maintenance; prohibits Lessee's right to sublet premises; gives Lessor the right to relocate all operations of Lessee; and gives Lessor the right to cancel the agreement if the annual tonnage falls below 100,000 tons.

Filing party: Mr. Carl S. Parker, Jr., Board of Trustees of the Galveston Wharves, P.O. Box 328, Galveston, Texas 77553.

Agreement No.: 6190-38.

Title: United States Atlantic & Gulf/Venezuela Freight Association.

Parties: Delta Steamship Lines, Inc., Venezuelan Line.

Synopsis: The proposed amendment completely revises the basic agreement and authorizes, among other things, independent action, sectionalization and alternate port service as well as numerous non-substantive changes.

Filing party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Agreement No.: 10447-1.

Title: Westwood Shipping Lines/Totem Ocean Trailer Express, Inc., Equipment Interchange Agreement.

Parties: Westwood Shipping Lines, Totem Oceam Trailer Express, Inc.

Synopsis: Agreement No. 10447-1 amends the basic agreement between the parties to include Westwood Shipping Lines' new service between ports on the Pacific Coast and the Far East.

Filing party: Joseph H. Dettmar, Esquire, Garvey, Schubert, Adams & Barer, 1000 Potomac Street, NW., Washington, D.C. 20007.

By Order of the Federal Maritime Commission.

Dated: August 17, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-22013 Filed 8-19-83; 8:45 am]

BILLING CODE 6730-01-M

Section 15 Agreements; Cancellation

Agreements Nos.: 10193, 10195, 10201 and 10232.

Title: Lykes Bros. Steamship Co., Inc./Strachan Shipping Co., Inc., Agency Agreements.

Parties: Lykes Bros. Steamship Co., Inc./Strachan Shipping Co., Inc.

Synopsis: By letter dated July 27, 1983, the Commission received notice to cancel the above agreements effective August 29, 1983, in accordance with the agreements' terms.

Filing Party: R. J. Finnan, Pricing Analyst, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

By Order of the Federal Maritime Commission.

Dated: August 17, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-22072 Filed 8-19-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Citizens Bancorp, et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Citizens Bancorp,* Riverdale, Maryland; to acquire 100 percent of the voting shares of Peoples Security Bank of Maryland, Landover, Maryland. Comments on this application must be received not later than September 16, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Farmers Bancshares, Inc.,* Cadwell, Georgia; to acquire 100 percent of the voting shares or assets of The Security State Bank, McRae, Georgia. Comments on this application must be received not later than September 14, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Monmouth Financial Services, Inc.,* Monmouth, Illinois; to acquire 100 percent of the voting shares of The First State Bank of Little York, Little York, Illinois. Comments on this application must be received not later than September 7, 1983.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Montana Bancsystem, Inc.,* Billings, Montana; to acquire 6.26 percent of the voting shares of Bank of Montana System, Great Falls, Montana. Comments on this application must be received not later than September 14, 1983.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United Bankers, Inc.,* Waco, Texas; to acquire 59.9 percent of the voting share of Travis Bank & Trust, Austin, Texas. Comments on this application must be received not later than September 14, 1983.

Board of Governors of the Federal Reserve System, August 16, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-22905 Filed 8-19-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies, Proposed De Novo Nonbank Activities; Barclays Bank PLC; et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or

at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific applications to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, Barclays Bank International Limited, each a bank holding company whose principal office is in London, England (consumer Finance; Oregon and Georgia): To engage through their subsidiary, BarclaysAmerican/Financial, Inc. ("BAF"), in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning) and acting as agent for the sale of related credit life, credit accident and health and credit property insurance. Because BAC and BAF were engaged in insurance activities, or had received approval to engage in such activities, in Oregon and Georgia before May 1, 1982, the insurance restrictions of the Garn-St. Germain Depository Institutions Act of 1982 do not apply to these office relocations. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by the insurance underwriting subsidiaries of BarclaysAmerican-Corporation ("BAC"). These activities would be conducted from offices of BAF to be located in Albany, Georgia, serving customers in Albany and surrounding areas in Georgia and in Bend, Oregon, serving customers in Bend and surrounding areas in Oregon. This notification is for the relocation of two existing offices. Comments on this application must be received not later than September 16, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Union Trust Bancorp*, Baltimore, Maryland (commercial lending activities; United States): To engage in commercial lending and providing services incidental to such loans. These activities would be conducted from an office in Baltimore, Maryland, serving the entire United States Comments on this application must be received not later than September 9, 1983.

2. *James Madison Limited*, Washington, D.C. (mortgage lending activities; Maryland and District of Columbia): To continue to engage, through its subsidiary, A. E. Landvoigt, Inc., in the activities of originating and servicing residential loans secured by real estate following the relocation of an office from Suitland, Maryland to Silver Spring, Maryland. The application does not involve the commencement of any new activities. The office will continue to service customers principally in the suburban Maryland and District of Columbia portions of the Washington, D.C. SMSA. Comments on this application must be received not later than September 13, 1983.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mid-America Bancshares, Inc.*, Wichita, Kansas (lending and insurance activities; Kansas): Proposes to engage *de novo* through its subsidiary, Financial Services of Mid-America, Inc., in consumer and commercial finance activities, including the extension of retail and installment notes or contracts, the purchase of recreational lot notes, and extension of direct loans to dealers for the financing of inventory (floor planning) and working capital purposes; and acting as agent for sale of life, accident and health insurance directly related to its extension of credit. These activities would be conducted in the State of Kansas. Comments on this application must be received not later than September 16, 1983.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California (mortgage and servicing activities; United States): To engage through its subsidiary, Security Pacific Mortgage Corporation, in the origination and acquisition of mortgage loans, including development and construction loans on multi-family and commercial properties for Security Pacific Corporation's own account or for sale to others; and the servicing of such loans for others. These activities would be conducted from an office of Security Pacific Mortgage Corporation in Denver, Colorado, Serving the United States. Comments on this application must be received not later than September 16, 1983.

Board of Governors of the Federal Reserve System, August 16, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-22906 Filed 8-19-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company, Proposed De Novo Nonbank Activity; First Chicago Corp.

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to this application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois (trust activities; United States): To engage, through its *de novo* subsidiary, First Chicago Trust Company of New York, in performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency or custodial nature). These activities will be performed from an office in New York City, serving the entire United States. Comments on this application must be received not later than September 7, 1983.

Board of Governors of the Federal Reserve System, August 17, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-22900 Filed 8-19-83; 8:45 am]

BILLING CODE 6210-01-M

Fleet Financial Group, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. 83-21396) published at page 35718 of the issue for Friday, August 5, 1983. In addition to the activities listed, Fleet Financial Group, Inc., Providence, Rhode Island, will engage through its subsidiary in insurance agency activities and credit property insurance in conformity with the Garn-St. Germain Depository Institutions Act of 1982.

Board of Governors of the Federal Reserve System, August 16, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-22906 Filed 8-19-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Wes-Tenn Bancorp, Inc.; et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wes-Tenn Bancorp., Inc.*, Covington, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Tipton County Bank, Covington, Tennessee. Comments on this application must be received not later than September 16, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Fowler Bancorp, Inc.*, Fowler, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fowler, Fowler, Colorado. Comments on this application must be received not later than September 14, 1983.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Silicon Valley Bancshares*, San Jose, California; to become a bank holding company by acquiring 100 percent of the voting shares of Silicon Valley Bank, San Jose, California. Comments on this application must be received not later than September 14, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *The Lawton Company*, Sulphur, Louisiana; to become a bank holding company by retaining 100 percent of the voting shares of William T. Burton Industries, Lake Charles, Louisiana and indirectly retain the shares of Calcasieu Marine National Bank, Lake Charles, Louisiana. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Comments on this application must be received not later than September 16, 1983.

Board of Governors of the Federal Reserve System, August 16, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-22907 Filed 8-19-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements; Preventive Health Services Acquired Immunodeficiency Syndrome (AIDS) Surveillance and Associated Epidemiologic Investigations; Availability of Funds for Fiscal Year 1983

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1983 for cooperative agreements for surveillance and associated epidemiologic investigations of the Acquired Immunodeficiency Syndrome (AIDS), Catalog of Federal Domestic Assistance Number 13.283. This program is authorized by Section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. Office of Management and Budget clearance may be required for this project.

Eligible applicants for this program are the official public health agencies of metropolitan areas with a population of at least 1.5 million (Standard Metropolitan Statistical Area—1980 Census) which have either:

A. Reported at least 20 AIDS cases that meet the CDC surveillance case definition:

1. Presence of reliably diagnosed disease at least moderately indicative of underlying cellular immune deficiency (e.g., Kaposi's sarcoma in patients who are less than 60 years of age or patients with *Pneumocystis carinii* pneumonia or other opportunistic infections); and

2. Absence of known causes of underlying immune deficiency and of any other reduced resistance reported to be associated with the disease; or

B. Documented at least 35 patients with well-characterized symptoms which may represent mild or early AIDS (i.e., prolonged and unexplained generalized lymphadenopathy, thrombocytopenia, thrush, etc.).

Applicants must demonstrate that AIDS surveillance and associated epidemiologic investigations cooperative agreement funds will be used primarily for activities to improve the identification and reporting of AIDS cases and related syndromes (prolonged and unexplained generalized lymphadenopathy, thrombocytopenia, thrush, etc.), to conduct epidemiologic investigations of selected cases, and to establish a central registry of cases in the official public health department.

Evaluation and ranking of applications will be based on the following factors:

1. The total number of AIDS cases reported since June 1981 that meet the CDC surveillance case definition.

2. The total number of patients with well-characterized symptoms which may represent mild or early AIDS.

3. The applicant's understanding of the AIDS problem and the purpose of the cooperative agreement.

4. The applicant's current activities in AIDS surveillance and research including relationships to other AIDS investigators in the area.

5. Details of how the applicant will develop and implement a surveillance system for AIDS among physicians and hospitals, including establishing and maintaining a central registry of cases, and how epidemiologic investigations of selected cases will be conducted.

6. The size, qualifications, and time allocation of the proposed staff and a description of how the project will be administered.

7. A proposed schedule for accomplishing the activities of the cooperative agreement, including time frames.

8. Demonstration of close collaboration and working relationships between the public health department and those medical institutions diagnosing and treating patients with AIDS and related illnesses.

Purpose and Cooperative Activities

A. Purpose

The purpose of this cooperative agreement is to assist high priority urban areas in designing and implementing AIDS surveillance and associated epidemiologic investigations to determine incidence trends, identify risk groups and risk factors, and provide opportunities for epidemiologic and laboratory studies of AIDS and related disorders.

B. Cooperative Activities

The collaborative and programmatic involvement of CDC and recipients of funds is as follows:

1. *Recipient Public Health Agency Activities.*

a. Design and conduct surveillance activities directed to improving the reporting of all AIDS cases and suspected cases diagnosed in the public health agency's geographical jurisdiction.

b. Establish systems with physicians, hospitals or clinics, cancer registries, laboratories, and other public health agencies for identifying and reporting cases.

c. Develop and maintain a central registry of all reported cases which includes epidemiologic and clinical information for individual cases, and which allows for rapid uniform updates and retrieval of case information for regular and special tabulations of data for analysis.

d. Evaluate the cost-benefit effectiveness of surveillance approaches.

e. In consultation with CDC, analyze, present, and publish the results of surveillance activities.

f. Conduct epidemiologic investigations of cases that are not members of known risk groups including possible blood transfusions related cases and their donors.

2. *Centers for Disease Control Activities.*

a. Collaborate in the design, development, and implementation of surveillance and associated epidemiologic investigations including specific approaches to AIDS surveillance and epidemiologic investigations, methods for establishing and maintaining a central registry of cases, and publication of findings.

b. Provide criteria for the surveillance definition of AIDS cases and case report forms.

c. Assist the public health agencies in analyzing data from reported cases including incidence trends and groups at risk.

d. Provide onsite technical assistance in planning, operating, and evaluating surveillance activities.

e. Assist the public health agencies in conducting epidemiologic investigations of selected AIDS cases.

Progress reports of cooperative agreement activities will be submitted by the recipients of funds quarterly for the first year and semiannually thereafter. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of the project period.

During Fiscal Year 1983, approximately $400,000 will be available to fund four to eight cooperative agreements. Individual project awards are expected to range from $50,000 to $100,000.

Applications should be submitted for a 1-year budget period and 1- to 3-year project period. Continuation awards witnin the project period will be made by CDC on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change due to budgetary uncertainties.

Cooperative agreement funds may be used to support personnel and to purchase supplies and services directly related to AIDS surveillance and epidemiologic investigation activities. Funds may not be used to supplant funds supporting existing AIDS activities provided by the health department or to support construction costs.

Applications for a cooperative agreement must include a narrative which summarizes:

1. The background and need for project support including information that relates to factors by which the applications will be evaluated.

2. The objectives of the proposes project which are consistent with the purpose of the cooperative agreement and which are measureable and time-phased.

3. The methods which will be used to accomplish the objectives. (of special importance will be the methods used to detect and conduct epidemiologic investigations of diagnosed cases.)

4. The methods which will be used to evaluate the successfulness of surveillance and epidemiologic investigations.

5. Fiscal information pursuant to utilization of awarded funds in a manner consistent with the purpose and objectives of the project.

6. Any other information that will support the request for assistance.

The original and one copy of the application must be submitted to the address in 1.a. below on or before 4:30 p.m. (e.d.t.) on September 12, 1983. One additional copy should be simultaneously submitted to the appropriate Department of Health and Human Services Regional Office listed below. Applicants may meet the deadline by either delivering or mailing the application on or before that date, provided the following conditions are met:

1. *Mailed Applications.* Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date by Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Foom 107A, Atlanta, Georgia 30305; or

b. Sent by first class mail, postmarked on or before the deadline date, and received by the granting agency in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or use U.S. Postal Service express mail or certified mail, and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received at the place specified in paragraph 1. above before close of business on or before the deadline date (4:30 p.m. e.d.t., September 12, 1983).

3. *Late Applications.* Applications which do not meet the criteria in either paragraph 1. or 2. above are considered late applications and will not be considered in the current competition.

Applications are not subject to the review requirements of the National Health Planning and Resource Development Act of 1974, as amended, or to intergovernmental review pursuant to Executive Order 12372.

Information on application procedures, copies of application forms, and other material may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 107A, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from James R. Allen, M.D., AIDS Activity, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-3472 or FTS 236-3472.

Dated: August 17, 1983.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building No. 1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Towers, Suite 1007, Atlanta, Georgia 30323, (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353-1365

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 South Street, Denver, Colorado 80294, (303) 837-4461

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S./402, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 83-23038 Filed 8-19-83; 1:02 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket Nos. 79N-0423, 79N-0424, 79N-0425, 79N-0426, 80N-0310, and 80N-0311; DESI 2238 and 5773]

Certain Sulfonamide Preparations for Vaginal Use; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying Gantrisin Cream, Koro-Sulf Cream, and Westhiazole Vaginal Jelly to lacking substantial evidence of effectiveness for all indications, and is proposing to withdraw approval of their new drug applications (NDA's). FDA is amending a previous **Federal Register** notice, is reclassifying certain indications for Sultrin Cream from probably effective or possibly effective to lacking substantial evidence of effectiveness, and is proposing to withdraw approval of those parts of the NDA for Sultrin Cream that provide for those indications. On the ground that there is a lack of substantial evidence of effectiveness for its labeled indications, FDA is proposing to withdraw approval of the NDA for AVC Cream as it pertains to the original formulation (sulfanilamide, aminacrine, and allantoin) and to refuse approval of a supplement by Merrell-National Laboratories (now Merrell Dow Pharmaceuticals) which reformulates AVC Cream to sulfanilamide and aminacrine. FDA also is announcing the conditions for marketing a second supplemental reformulation of AVC Cream (sulfanilamide alone) for the indication for which it is regarded as effective. FDA is offering an opportunity for a hearing on the above proposals.

DATE: Hearing requests are due on or before September 21, 1983.

Docket Numbers

Docket No. 79N-0423: AVC Cream containing sulfanilamide, aminacrine hydrochloride, and allantoin (NDA 6-530), Merrell Dow Pharmaceuticals, Inc., Subsidiary of Dow Chemical Co., 110 E. Amity Rd., Cincinnati, OH 45215.

Docket No. 79N-0424: AVC Cream containing sulfanilamide and aminacrine.

Docket No. 79N-0425: AVC Cream containing sulfanilamide.

Docket No. 79N-0426: Gantrisin Cream containing sulfisoxazole (NDA 9-173), Roche Laboratories, Division of Hoffmann-LaRoche Inc., Nutley, NJ 07110; Koro-Sulf Cream containing sulfisoxazole (ANDA 83-863), Holland-Rantos Co., Inc., 865 Centennial Ave., Box 385, Piscataway, NJ 08854.

Docket No. 80N-0310: Westhiazole Vaginal Jelly containing sulfathiazole (NDA 5-514), Westwood Pharmaceuticals, 468 Dewitt St., Buffalo, NY 14213.

Docket No. 80N-0311: Sultrin Cream containing sulfathiazole, sulfacetamide, sulfabenzamide, and urea (NDA 5-794), Ortho Pharmaceutical Corp., Rte. 202, Raritan, NJ 08869.

ADDRESSES: Communications in response to this notice should be identified with the reference numbers DESI 2238 and 5773, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857:

Requests for hearing (identify with appropriate docket number described above): Dockets Management Branch (HFA-305), Rm. 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFW-35), Rm. 12A-12.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics.

Requests for guideline labeling: Division of Anti-Infective Drugs (HFN-140), National Center for Drugs and Biologics.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFN-501), National Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: David T. Read, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: The products affected by this notice are all vaginal sulfonamides. Because of the close relationship of these products, FDA has chosen to deal with them in a single document. Section I contains FDA's evaluation of products for which very little, if any, data have been submitted. The greater part of this document, Sections II through V, is devoted to FDA's evaluation of AVC Cream, a product for which voluminous data have been submitted.

I. Gantrisin Cream, Westhiazole Vaginal Jelly, and Sultrin Cream

Gantrisin Cream, Westhiazole Vaginal Jelly, and Sultrin Cream were reviewed and evaluated in the Drug Efficacy Study. FDA's conclusions were published in the **Federal Register** of July 27, 1972 (37 FR 15028). Based on studies reviewed by the National Academy of Sciences-National Research Counci (NAS-NRC), FDA evaluated these products as effective for the treatment of *Haemophilus vaginalis* vaginitis and less-than-effective (probably effective, possibly effective, and lacking substantial evidence of effectiveness) for certain other indications. (The abbreviated new drug application listed above in Docket No. 79N-0426 was

approved on the basis of the published DESI conclusions on Gantrisin Cream.)

The notice of July 27, 1972, offered an opportunity for hearing on the proposal to withdraw approval of those indications classified as lacking substantial evidence of effectiveness. No data were submitted, no hearing was requested, and all those indications were deleted from all three products' labeling. In accord with the notice of July 27, 1972, approval of those indications has been withdrawn.

No data were ever submitted on the indications classified as probably effective and possibly effective in the July 27, 1972 notice. Therefore, these indications are now classified as lacking substantial evidence of effectiveness. The notice of July 27, 1972 (37 FR 15028) is amended by deleting the following sentence from the paragraph under the heading "Group E" in subsection B.2.b.: "It may also be used as a deodorant for saprophytic infection following radiation therapy."

A. The Director of the National Center for Drugs and Biologics now concludes that none of the references (Refs. 1, 2, and 3) that were the basis of the NAS–NRC evaluation of these products as effective for *Haemophilus vaginalis* vaginitis (hereinafter referred to as "*H. vag.* vaginitis") meets the requirements of 21 CFR 314.111(a)(5)(ii) for an adequate and well-controlled study. Refs. 1 and 2 are reports of the isolation of *H. vaginalis*, and do not even purport to be clinical investigations of drug effectiveness. Although the success rates of various treatments are presented, they are merely uncontrolled and unblinded case reports (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). Ref. 3 is simply a preliminary report of the investigation reported in Ref. 2.

B. Gantrisin Cream and Westhiazole Vaginal Jelly are no longer marketed. Gantrisin Cream, identical in formulation to Koro-Sulf Cream, was nevertheless the subject of a study by Merrell (discussed below at III.B. Study I) comparing Gantrisin Cream, reformulated AVC Cream, and AVC base in the treatment of *H. vag.* vaginitis. Merrell's adequate and well-controlled study showed Gantrisin Cream (and Hence Koro-Sulf Cream) no more effective than the AVC base. Therefore, Gantrisin Cream, Westhiazole Vaginal Jelly, and Koro-Sulf Cream are classified as lacking substantial evidence of effectiveness for the treatment of *H. vag.* vaginitis, as well as all other indications.

C. Investigations of the effectiveness of Sultrin Cream for the treatment of *H. vag.* vaginitis are ongoing, and this product is, at this time, still classified as effective for this indication.

References

1. Brewer, J. I., B. Halpern, and G. Thomas, "Hemophilus Vaginalis Vaginitis," *American Journal of Obstetrics and Gynecology*, 74:834–843, 1957.

2. Gardner, H. L. and C. D. Dukes, "Haemophilus Vaginalis Vaginitis: A Newly Defined Specific Infection Previously Classified 'Nonspecific' Vaginitis," *American Journal of Obstetrics and Gynecology*, 69:962–976, 1955.

3. Gardner, H. L. and C. D. Dukes, "New Etiologic Agent in Nonspecific Bacterial Vaginitis," *Science*, 120:853, 1954 (Communication).

II. AVC Cream (Current Formulation)

AVC Cream containing sulfanilamide, aminacrine hydrochloride, and allantoin was the subject of a **Federal Register** notice published on July 27, 1972 (37 FR 15030). In that notice AVC Cream was evaluated as possibly effective for the treatment of *H. vag.* vaginitis, trichomoniasis, and vulvovaginal candidiasis (hereinafter the organisms which are the causative agents of these diseases are referred to as "Haemophilus," "Trichomonas," and "Candida"). In response to the July 27, 1972 notice, what is now Merrell Dow Pharmaceuticals (Merrell) submitted data on September 7, 1972 and January 5, 1973. The notice also evaluated AVC cream as lacking substantial evidence of effectiveness for cervictis and cervical infections. No data were ever submitted in support of this indication.

The submission of September 7, 1972, contained data previously submitted to NAS–NRC in 1966 (8 publications or reports concerning the treatment of vaginitis caused by Candida, Trichomonas, or mixed bacteria), the reports of 10 studies completed after the 1966 submission, and a summary of and protocols for 7 additional studies. The January 5, 1973 submission merely contained case reports (raw data) and a new summary of the results from the seven studies included in the September 7, 1972 submission.

A. Seven of the eight publications (Refs. 1 through 3 and 5 through 8) previously submitted to NAS–NRC were open (uncontrolled, unblinded) studies of the use of AVC Cream in various vaginitides. The absence of a control—a placebo or a drug of known effectiveness—renders the studies incapable of demonstrating effectiveness (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). The studies also fail to demonstrate that each component contributes to te claimed effects of the combination product (21 CFR 300.50). The only study (Ref. 4) which had a control (25 subjects using AVC, 6 using AVC without the aminacrine, and 6 using base alone), shows sulfanilamide and allantoin no better than base alone.

B. The seven studies for which raw data were submitted in 1973 were clinical studies designed to determine whether sulfanilamide could be removed from AVC Cream without a loss in effectiveness for the treatment of vaginitis caused by Haemophilus, Trichomonas, Candida, or other "non-specific" bacteria. Each study compared AVC Cream as currently marketed to AVC Cream without sulfanilamide. Each investigator selected 50 patients with clinical and microbiological evidence of the assigned type of vaginitis.

The results obtained for "non-specific" vaginitis are invalid because the protocols did not exclude patients with *H. vag.* vaginitis (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)).

The seven clinical studies are not adequate and well controlled as required by 21 CFR 300.50 and 314.111 (a)(5)(ii). Although AVC Cream without sulfanilamide is a satisfactory control for showing the effect of sulfanilamide in the combination drug AVC Cream, use of such a control does not establish the contributions of allantoin and aminacrine as required by 21 CFR 300.50. Furthermore, AVC Cream without sulfanilamide is not a satisfactory control if one wishes to show the effectiveness of the proposed reformulation for single-entity sulfanilamide (see discussion below at III), because it is impossible to assess the possible interactions of allantoin and/or aminacrine with sulfanilamide. Similarly, the test drug in these seven studies is not standardized as to identity with the proposed reformulation (21 CFR 314.111(a)(5)(ii)(*a*)(*5*)).

Although the results obtained by Merrell show trends in favor of AVC Cream, Merrell does not allege that any of the results are statistically significant. Further, Merrell failed to submit a summary of the statisical methods of analysis used to evaluate these data (21 CFR 314.111(a)(5)(ii)(*a*)(*5*)).

C. Except for the Morese study, the 10 studies included in the September 7, 1972 submission did not include a control group of any kind (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). The firm itself, in its summary of these studies, describes them as "uncontrolled." Even if the studies had been adequate and well controlled, however, they could not support the effectiveness of the combination drug product because the effectiveness of its individual components was not demonstrated (21 CFR 300.50).

One of these 10 studies, the Morese study, included a control group that was treated with nystatin, a drug of known effectiveness. This comparison study between AVC Cream and nystatin was conducted on 59 patients with candidiasis. The observed cure rates (48 percent for AVC versus 78 percent for nystatin) demonstrated AVC Cream to be significantly inferior to nystatin in the treatment of candidiasis.

After reviewing the submissions of September 7, 1972 and January 5, 1973, FDA found that the data submitted did not provide substantial evidence of effectiveness for the less-than-effective indications of AVC Cream. The data appeared to indicate, however, that the drug product may be useful for symptomatic relief from the itching and irritation of vaginitis. Therefore, the drug product was reclassified in the **Federal Register** of February 25, 1974 (39 FR 7190) to probably be effective for relief of symptoms of vulvovaginitis when isolation of the specific organism responsible is not possible.

References

1. Cacciarelli, R. A., "Acridine-Sulfonamide of [sic] Therapy of Trichomonas Vaginitis," *The Journal of the Medical Society of New Jersey*, 46:87–88, 1949.

2. Cortese, J. T. and J. Padovano, "Treatment of Trichomonas Vaginitis," *The Journal of the Medical Society of New Jersey*, 48:367–369, 1951.

3. Cortese, J. T., "A Conservative and Effective Method for Office Management of Leukorrhea," *Clinical Medicine*, 2:45–48, 1955.

4. Dill, L. V. and S. S. Martin, "The Use of a Vaginal Cream Containing 9-Amino-Acridine in the Treatment of Mycotic Vaginitis. Preliminary Report," *Medical Annals of the District of Columbia*, 17:389–390, 1948.

5. Hensel, H. A., "An Improved Vaginal Cream in the Practice of Gynecology," *Postgraduate Medicine*, 8:293–296, 1950.

6. Nugent, F. and J. E. Myers, "a New Cream For Treating Vaginitis," *Pennsylvania Medicine*, 69:44–46, 1966.

7. Salerno, L. J., G. Ortiz, and V. Turkel, "Vaginitis, A Diagnostic and Therapeutic Approach," presented as a scientific exhibit at the 115th Annual Convention of the American Medical Association in Chicago, June 26–30, 1966.

8. Rivkind, J., AVC Improved and AVC Improved with Dienestrol, letter dated April 9, 1965 to Armand N. DeSanctis, M.D., of the National Drug Company.

III. AVC Cream (Proposed Reformulations)

Merrell submitted two supplemental NDA's for reformulation of AVC Cream. The supplemental NDA of July 2, 1975, provides for the deletion of allantoin in one formulation and the deletion of both allantoin and aminacrine in another. The supplemental NDA of December 15, 1977, contains data in support of the effectiveness of the formulation that deletes both allantoin and aminacrine.

In its supplemental NDA of July 2, 1975, Merrell admitted that "[a]minacrine was not established as a contributing ingredient in eliminating those pathogens and related signs and symptoms of vulvovaginitis" and that "[t]here is no evidence that allantoin has any antimicrobial action" (21 CFR 300.50). Merrell has indicated to the agency that it does not wish to market a combination product if AVC Cream reformulated to sulfanilamide alone is an approvable drug product. The discussion that follows, therefore, reviews the data for evidence of the effectiveness of single-entity sulfanilamide.

A. *Supplemental Application of July 2, 1975.*

Study I. This is a randomized, double-blind, multicenter study comparing the proposed reformulation of AVC Cream (consisting of sulfanilamide, aminacrine, and base) to its individual ingredients for the treatment of *H. vag.* vaginitis, candidiasis, and trichomoniasis. Patients with *H. vag.* vaginitis received treatment twice daily for 15 days; patients with candidiasis or trichomoniasis received treatment once daily for 30 days. Patients were reassessed 3 to 5 days posttreatment and 30 days posttreatment to determine the clinical and microbiological cure rates. Criteria for final cure (and the measurement used by FDA in the following discussion of relative cure rates in Merrell's studies) are the absence at 30 days posttreatment of signs and symptoms of vaginitis (clinical cure) and negative smears and cultures (microbiological cure).

Merrell's "clinical cure," although a valid measurement, is not the same as "symptomatic relief." Merrell's first measure for clinical cure occurred *33 to 35 days after* teatment started. But Merrell's labeling claims "Improvement in symptoms should occur *within a few days*" (emphasis added). Merrell alleges that "[a] slight modification of protocol 047–002 was made in the course of the study to increase the data available on symptomatic response." This modification provided that "2 days and again after 7 days of treatment the patient will complete a symptom rating self-mailer form." However, the only data on symptomatic response reported by Merrell are from its posttreatment clinical cure measurements. Clinical cure at 33 days after the start of treatment is not a valid measure of symptomatic relief that is supposed to occur within a few days of starting treatment (21 CFR 314.111(a)(5)(ii)(*a*)(*3*)).

In the treatment of trichomoniasis, Merrell reports only a 4 percent difference in cure rates (23/51 or 45 percent versus 19/46 or 41 percent) between sulfanilamide-containing treatment groups and non-sulfanilamide-containing treatment groups.

In the treatment of *H. vag.* vaginitis, the 2 investigators who had subjects with *H. vag.* vaginitis reported cures in only 9 of 30 subjects (30 percent) using sulfanilamide and base. Using base alone, the sponsor reports a cure rate of 5/36 (14 percent). Although this difference is statistically significant, the low cure rate reported for sulfanilamide insuch a small number of subjects cannot be accepted as substantial evidence of the effectiveness of sulfanilamide in the treatment of *H. vag.* vaginitis.

In the treatment of candidiasis, Merrell reports a significant difference ($p < .05$) in cure rates between sulfanilamide and base (35/49 or 71 percent versus 28/57 or 49 percent), although it reports only a 9 percent difference in cure rates (66/104 or 63 percent versus 62/114 or 54 percent) between sulfanilamide-containing treatment groups and non-sulfanilamide-containing treatment groups.

Study II. Study II (protocol #047–007) is similar to Study I (same protocol and criteria), except that subjects with trichomoniasis or candidiasis were treated twice daily for 15 days instead of once daily for 30 days. Although the 18 investigators began the study with 1,195 subjects, 565 subjects (47 percent) were dropped.

For trichomoniasis, the study failed to demonstrate that sulfanilamide (10/23 or 43 percent cure rate) is more effective than base alone (10/26 or 38 percent cure rate) in eradicating the relevant organism. The study also failed to show that sulfanilamide (10/31 or 32 percent cure rate) is more effective than base alone (8/27 or 30 percent cure rate) in the microbiological cure of *H. vag.* vaginitis.

For the treatment of candidiasis, the study, as reported by the sponsor, showed a statistically significant difference between sulfanilamide and base alone (28/62 or 45 percent versus 16/59 or 27 percent, $p < .05$). An indpendent analysis of these data by FDA, using different exclusion criteria, yielded similar results (28/58 or 48 percent versus 18/74 or 24 percent, $p < .01$).

The supporting data provided in Study II on symptomatic relief fail to provide the details needed for scientific evaluation (21 CFR 314.111(a)(5)(ii)(*c*)). No followup data are provided on

patients who reported symptomatic relief during the first week of therapy. Whether a patient reporting relief on days 1 through 7 remained free of symptoms on the following days, is unknown. Moreover, there is no listing of patients showing whether they were counted as successes or failures, so that reported results cannot be confirmed.

Many of the subjects who were counted as obtaining symptomatic relief were actually eventual treatment failures and were dropped from the study to be treated with other drugs, suggesting that the definition of success may not be clinically meaningful. The cases are grouped together as vulvovaginitis, not analyzed by specific diagnoses. This represents an inadequate definition of the treatment population (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)), and is medically unreasonable. The firm attempts to explain this approach as based on the idea the AVC is for "treatment of vulvovaginitis with sulfanilamide for symptomatic relief when the offending organism cannot be isolated." It is not necessary to reach the question of the reasonableness of this indication, because Study II cannot support such an indication: patients were not undiagnosable. Admission to this investigation required each subject to have a positive culture identification. Therefore the offending organism could, in fact, be isolated. Moreover, there was evidence that AVC was able to cure Candida more frequently than placebo. It is thus essential to see whether symptomatic relief was simply part of the response of patients with candidiasis to treatment, rather than the non-specific symptomatic response implied.

In addition to these deficiencies, the data presented by Merrell on prompt relief (complete relief within 3 to 4 days) fail to demonstrate an advantage for sulfanilamide. At the end of 3 days, only 16 percent of the patients using sulfanilamide reported complete relief of symptoms. In comparison, at the end of 4 days, 19 percent of patients using base alone reported complete relief.

B. *Supplemental Application of December 15, 1977.* In this second supplemental NDA, Merrell submitted three studies to support the effectiveness of sulfanilamide plus base ointment in the treatment of trichomoniasis, *H. vag.* vaginitis, and candidiasis, and in the symptomatic relief of these vaginitides. A fourth study of symptomatic relief in undiagnosed vaginitis was also submitted.

Study I (Trichomoniasis). This was a double-blind comparison of sulfanilamide plus base, base alone, and petrolatum. Patients with the typical signs and symptoms of trichomoniasis, confirmed by wet mounts and cultures, were randomly assigned to the three treatment groups. Subjects self-administered treatment every day for 30 days. After the first week of treatment they were questioned about the onset and amount of symptomatic relief. They were reexamined approximately 1 week posttreatment and again 25 to 45 days posttreatment, when repeat smears and cultures were performed. Cure of the disease was judged by both eradication of the offending organism and disappearance of the signs and symptoms of the infection.

In this study, 18 investigators started with 832 subjects, but, according to the sponsor, only 407 met protocol requirements. This means that over half the subjects originally entered in the study were excluded from analysis. The sponsor's analysis of the 407 remaining subjects revealed a small, but statistically significant ($p < .05$) difference in the cure rates of sulfanilamide (42 percent), base (33 percent) and petrolatum (28 percent). The sponsor concedes, however, that sulfanilamide's cure rates in the treatment of this venereal infection do not reach the level generally reported in the literature for metronidazole, a drug which is effective in 1-day therapy.

The sponsor created other categories of cure for the study such as "some relief during first 7 days," "complete relief furing first 7 days," "clinical cure, organism still present." These categories of what could be transient symptomatic relief are meaningless without evidence of the eradication of the offending organism and proper followup on symptomatic relief. Almost 25 percent of those patients within the category of "clinical cure" did not return for followup, and of those who did 34 percent had relapsed.

The data concerning these categories contain many errors. For example, one investigator (#027) has many patients (e.g., #331, 352, 354, 363, 372, etc.) marked as "lost contact" or "lost to followup" for whom the number of doses taken, dose(s) missed, or date of last dose taken are inexplicably recorded long after the patient is marked as lost. Symptomatic relief data derived in this manner are meaningless (21 CFR 314.111(a)(5)(ii)(*a*)(*3*)).

In summary, the data do not support the conclusion that sulfanilamide plus base has an effect on trichomoniasis different from base alone or petrolatum.

Study II (H. vag. vaginitis). Following the same protocol as the previous study, 195 subjects with vaginitis caused by Haemophilus were randomly placed on either sulfanilamide plus base or base alone. This study was conducted by a single investigator. One hundred subjects were dropped from the study. A 30-day course of treatment was administered, with followups at 7 to 10 days posttreatment and 30 days posttreatment.

Despite reporting a significant difference between sulfanilamide plus base and base alone in the percent of patients who had an absence of signs and symptoms of *H. vag.* vaginitis after 30 days ("clinical cure"), the sponsor found no significant differences in eradication of pathogens after 30 days (23 versus 18 percent) or symptomatic relief during the first 7 days. These findings do not show that sulfanilamide is an effective agent in the treatment of *H. vag.* vaginitis. Merrell concedes that "[n]either AVC Cream nor its individual ingredients is active against the [*H. vag.*] organism." Sulfanilamide fails to eradicate the organism and it is no better than base for sympotomatic relief. As stated above (See discussion at III. A. Study I), Merrell's data on 30-day "clinical cure" are not relevant to its claim for relief "within a few days."

Study III (Candidiasis). Following a protocol similar to the 2 previous studies, 120 subjects were enrolled by a single investigator (Morese) for the treatment of candidiasis. After 7 subjects were eliminated, the remaining 113 patients with the typical signs and sysmptoms of candidiasis, confirmed by smears and cultures, were placed on 30 days of treatment with either sulfanilamide plus base or base alone. One hundred eight patients were evaluable. Merrell reports a statistically significant difference in favor of sulfanilamide (32/51 or 66 percent versus 19/57 or 33 percent, $p < .05$).

Study IV. Study IV compared the results of four types of treatment (sulfanilamide plus base, base alone, petrolatum, and no treatment) for the symptomatic relief of vaginitis of undiagnosed etiology. No smears or cultures were performed and therefore no attempts at diagnosis of specific vaginitides were made. Without evidence of the etiological composition of the patient population (e.g., percent with gonorrhea, percent with tribhomoniasis, etc.) the results of the study are uniterpretable, for the reasons explained above in the discussion of Study II of the July 2, 1975 submission.

Two of three investigations found no difference between base, petrolatum, and sulfanilamide plus base. The third investigator (W. W. Bare) found sulfanilamide plus base superior. The

results obtained by Bare differ markely from those obtained by the other two investigators, particularly for the response to the base and petrolatum. All three investgators report comparable "complete relief" rates for sulfanilamide plus base (about 70 percent), but Bare found only 14 and 7 percent rates, respectively, for base and petrolatum, while the other two investigations report rates of 65 to 71 percent for these two treatments.

This inconsistency in results together with the inadequate definition of the study group, substantially weakens the finding of a significant difference favoring the sulfanilamide group, and leaves the study unable to provide substantial evidence of effectiveness for the symptomatic relief of vaginitis of undiagnosed etiology.

C. *Submission of January 26, 1981.*

Study I. This was a double-blind, multicenter comparison of the propsoed formulation of AVC Cream (sulfanilamide plus base), Gantrisin Cream, and AVC base in the treatment of *H. vag.* vaginitis in 774 women. Each woman was given a supply of coded medication sufficient for 30 days of twice daily therapy.

Six to 8 days after the start of therapy the subjects were contacted by telephone and the date on which relief was first experienced and the date of complete relief were recorded. Subjects were examined 3 to 5 days posttreatment and subjective and objective findings were recorded. Those who were both microbiologic cures (absence of *H. vag.* on wet mount and culture) and clinical cures (no abnormal symptoms or signs) and those who were clinical cures only were continued in the study and reevaluated 25 to 45 days posttreatment.

This study failed to show a consistent advantage of one treatment over another. Merrell's own synopsis of this study concluded "[t]here was no advantage or disadvantage of any one treatment" and "[t]here were essentially no differences in the cure rates of patients using reformulated AVC, Gantrisin, or base."

Study II. This study followed a nearly identical protocol to the previous study. The major differences were that it was a similar, single-investigator study, and Gantrisin was not studied. As in the previous study, Merrell concluded "[t]here were essentially no differences in the cure rates of patients using reformulated AVC and the patients using base."

Study III. This was a double-blind comparison of sulfanilamide plus base and base alone in selected patients with single or mixed vaginal infections. The study was terminated by Merrell "because of an insufficient number of suitable patients," and thus provides no evidence of effectiveness.

Study IV. This was a double-blind, randomized study of reformulated AVC and AVC base in "vaginitis of nonspecific origin." Unlike the study discussed above (at III. B. Study IV), where no diagnosis or cultures were done, in the present study smears and cultures were performed for the purpose of excluding patients with Trichomoniasis, Candidiasis, and *H. vag.* vaginitis.

In this study, two investigators (Weiss and Celniker) found no difference between AVC and base. As in the previous study of this type the results obtained by the third investigator (W. W. Bare) showed sulfanilamide superior. All three investigators report similar findings for AVC in the patients' report of some relief after 7 to 10 days (61 to 71 percent). However, Weiss and Celniker report that base did just as well (64 to 77 percent), contrasting with Bare's report of only 12 percent. Similar discrepancies exist for other parameters.

This study was also not adequate and well controlled. An internal Merrell memorandum dated January 18, 1978 (contained in the submission to FDA) indicates that Dr. Bare did not perform the cultures which the protocol required. This means that many of his patients may have had the vaginitides which, according to the protocol, were to be specifically excluded. These patients would therefore not be suitable for the purpose of this study (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)). Also, a letter from Merrell to the investigators dated July 7, 1977 (contained in the submission to FDA) indicates that AVC and the base may have been different colors. Merrell's attempt to do a double-blind study may have therefore failed, and there is created the possiblity of bias on the part of the subjects and the investigators (21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*c*)(*4*)(*ii*)).

IV. Summary of Data Submitted on AVC Cream

The data plainly fail to show substantial evidence of the effectiveness, as combination products, of the current formulation of AVC Cream (sulfanilamide, aminacrine, and allantoin) or the proposed reformulation of sulfanilamide and aminacrine. There is absolutely no evidence of the positive contribution of aminacrine or allantoin in these formulations for any labeled indication.

There is, however, substantial evidence from three clinical studies that sulfanilamide is effective, relative to placebo, in the treatment of vulvovaginal candidiasis. There is a lack of substantial evidence that sulfanilamide is effective against Haemophilus or Trichomonas.

The data submitted by Merrell in support of sulfanilamide's use in candidiasis have been carefully scrutinized. Three studies show sulfanilamide significantly more effective ($p < .05$) than placebo (III.A. Study I, 71 versus 49 percent in 30 days of treatment; III. A. Study II, 45 versus 27 percent in 15 days of treatment; III.B. Study III, 66 versus 33 percent in 30 days of treatment). However, because other vaginal products exist that are more effective and more convenient (e.g., cure rates in vulvovaginal candidiasis of over 80 percent have been observed following 3-day treatments with one nonsulfonamide drug), an appropriate labeling statement to that effect is to be included with the sulfanilamide product.

V. AVC Cream Reformulated to Sulfanilamide and Base

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that AVC Cream, as reformulated to sulfanilamide and base, is effective for the indication in the labeling conditions below. The drug product lacks substantial evidence in its old formulation of sulfanilamide, aminacrine, and allantoin, its proposed reformulation of sulfanilamide and aminacrine, and for other labeled indications.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications for the formulation now regarded as effective and supplement to the previously approved new drug application under conditions described herein.

1. *Form of drug.* The preparation is in a form suitable for vaginal administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations (guideline is available; see address above), and the labeling bears adequate information for safe and effective use of the drug. The Indication is as follows:

For the 30-day treatment of vulvovaginitis caused by *Candida albicans* only. Studies with sulfanilamide show a cure rate for Candida vulvovaginitis ranging from 48

to 71 percent as compared to a cure rate of 24 to 49 percent for the base alone. Other vaginal preparations for the treatment of this disease are available with 3-day therapy cure rates of 80 percent or better. AVC is *not* effective for the treatment of vulvovaginitis caused by *Trichomonas vaginalis* or *Haemophilus vaginalis*.

The labeling shall also bear the following information:

Contraindications: AVC should not be used in patients known to be sensitive to the sulfonamides.

Precautions: Because sulfonamides are absorbed from the vaginal mucosa the usual precautions for oral sulfonamides apply. Patients should be observed for skin rash or evidence of systemic toxicity, and if these develop, the medications should be discontinued.

Deaths associated with administration of sulfonamides have been reported from hypersensitivity reactions, agranulocytosis, aplastic anemia, and other blood dyscrasias.

Goiter production, diuresis, and hypoglycemia have occurred rarely in patients receiving sulfonamides. Cross-sensitivity may exist with these agents. Rats appear to be especially susceptible to the goitrogenic effects of sulfonamides, and long-term administration has produced thyroid malignancies in the species.

Sulfonamides readily pass through the placenta and reach fetal circulation. The concentration in the fetus is from 50–90% of that in the maternal blood and if high enough, can cause toxic effects. The safe use of sulfonamides in pregnancy has not been established. The teratogenic potential of most sulfonamides has not been thoroughly investigated in either animals or humans. However, a significant increase in the incidence of cleft palate and other bony abnormalities of offspring has been observed when certain sulfonamides of the short, intermediate, and long-acting types were given to pregnant rats and mice at high oral doses (7 to 25 times the human therapeutic dose).

Nursing Mothers: Sulfanilamide should be avoided in nursing mothers because absorbed sulfonamides will appear in maternal milk; and have caused kernicterus in the newborn. Because of the potential for serious adverse reactions in nursing infants from sulfonamides, a decision should be made whether to discontinue nursing or to discontinue the drug.

Adverse Reactions: Local sensitivity reactions such as increased discomfort or a burning sensation have occasionally been reported following the use of topical sulfonamides. Treatment should be discontinued if either local or systemic manifestation of sulfonamide toxicity or sensitivity occur.

3. *Marketing status.* Approval of an abbreviated new drug application (21 CFR 314.2) or a supplement to an approved or effective new drug application must be obtained before marketing sulfanilamide for vaginal use. The requirements for bioavailability-bioequivalence testing are waived for topically applied preparations (21 CFR 320.22). Marketing drug products before approval of a new drug application will subject those products, and the persons who caused the products to be marketed, to regulatory action.

VI. Opportunity for Hearing

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications for Gantrisin Cream, Westhiazole Vaginal Jelly, and Koro-Sulf Cream, and all amendments and supplements thereto, and of pertinent parts of the new drug applications for Sultrin Cream and AVC Cream, on the grounds that new information before the Director with respect to the drug products, evaluated together with the evidence available to him at the time the applications were approved, shows there is a lack of substantial evidence that the drug products will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. With respect to the new drug applications of Sultrin Cream and AVC Cream, an order withdrawing approval will not issue if these applications are supplemented, in accord with this notice, to delete the claims (and reformulation, in the case of AVC Cream) lacking substantial evidence of effectiveness. Approval of AVC Cream's original formulation will be regarded as withdrawn 60 days after approval of the supplement for reformulation and revised labeling.

In addition, notice is given to Merrell Dow Pharmaceuticals and to all other interested persons that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(d)), refusing to approve the supplement to NDA 6–530 providing for the reformulation of AVC Cream to sulfanilamide and amianacrine on the ground that, evaluated on the basis of information submitted as part of the supplemental application, there is a lack of substantial evidence that the drug product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof.

In addition to the specific grounds for the proposed withdrawl of approval, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it, e.g., any contention that a product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, contained in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations issued thereunder (21 CFR Parts 310 and 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) are hereby given an opportunity for a hearing to show why approval of the new drug application (or pertinent parts thereof in the case of AVC Cream and Sultrin Cream) should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to its legal status.

An applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before September 21, 1983, a written notice of appearance and request for hearing, specifying the appropriate docket number, and (2) on or before October 21, 1983, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on the actions proposed in this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a

waiver of any contentions concerning the legal status of any such drug product. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the new drug applications or the refusal to approve the supplemental new drug applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Such submissions except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (Sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to the Director of the National Center for Drugs and Biologics (21 CFR 5.82).

Dated: August 15, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-22929 Filed 8-19-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Administered Lands; Raton Basin Planning Unit, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of planning amendment on BLM administered lands in the Raton Basin Planning Unit.

SUMMARY: This notice issued pursuant to 43 CFR Part 1600 invites public review and comment on preliminary issues and planning criteria to be used in completing a planning amendment on the Raton Basin Plan which covers certain public lands, administered by BLM, located in three south-central counties of Colorado.

This proposed planning action involves preparation of a planning amendment and an environmental assessment utilizing input received from the public. The analysis and environmental assessment to be completed on or about September 29, 1984, will be prepared in accordance with 40 CFR Part 1500 and will include a determination of the consistency of the amendment with the policies and programs of local, state, and other Federal agencies. A decision statement will be issued by the District Manager with the approval of the State Director allowing a 30-day protest period (43 CFR 1601.6–1).

The public lands administerd by BLM analyzed and considered in this plan amendment are:

County	Acres
Custer	16,893
Huerfano	68,509
Las Animas	8,976
Total	94,378

Planning criteria to be used in the plan amendment are:

1. Public lands in the Raton Basin Planning Area are to be reanalyzed in the light of new data for minerals, forestry, and wildlife. The existing portions for these resources in the management framework plan are to be updated as required.

2. Public lands in the planning area are also to be reanalyzed due to new emphasis on land disposal. Lands suitable for disposal were identified, but because of changing conditions it is desirable to reevaluate these management decisions.

The interdisciplinary team developing the planning amendment/environmental assessment represents the following disciplines: lands, wildlife, minerals, cultural resources, forestry, recreation, and economics.

Public participation will be obtained during a public comment period initiated by this notice. Comments received on or before March 22, 1984, will be considered. Open houses will be held February 14 and 15, at 7 p.m. in the City Hall Council Room, Walsenburg, Colorado, and the Community Room, First National Bank Building, Canon City, Colorado. This will allow the public the opportunity to discuss this planning amendment effort and potential land disposal. Preliminary Issues and Planning Criteria will be available for review.

Comment or requests for further information should be addressed to L. Mac Berta, Area Manager, Royal Gorge Resource Area, Bureau of Land Management, P.O. Box 1470, Canon City, Colorado 81212; telephone (303) 275–7578.

Copies of the amendment and the environmental assessment will be available for review at the Royal Gorge Resource Area Office, 831 Royal Gorge Boulevard, and at the Canon City District Office, 3080 East Main Street, Canon City, Colorado.

Stewart A. Wheeler,

Acting District Manager.

[FR Doc. 83-22948 Filed 8-19-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Mineral Search, Inc., Big Thicket National Preserve, Texas; Availability of Plan of Operations and Environmental Analysis for the Purpose of Conducting a Seismic Survey

Notice is hereby given in accordance with Part 9, § 9.52(b), of Title 36 of the Code of Federal Regulations that the National Park Service has received from Mineral Search, Incorporated, a Plan of Operations for the purpose of conducting a seismic survey in the Beaumont Unit of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; the Jefferson County Courthouse, in Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico. Copies of the documents are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87504, and will be sent upon request.

Dated: August 12, 1983.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 83-22928 Filed 8-19-83; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, September 24, 1983 at 1:00 p.m. at the American Legion Post 202 in Williamsport, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on

general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Davidsonville, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

1. Old and New Business
2. Superintendent's Report
3. Park Land Protection Plan
4. Committee Reports: Plans and Projects Committee; Recreation Policies and Issues Committee; Resource Protection Committee
5. Public Comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection four (4) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: August 15, 1983.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 83-22926 Filed 8-19-83; 8:45 am]

BILLING CODE 4310-70-M

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 7:00 p.m., Tuesday, September 13, 1983, at the San Jose Granary 701 E. Pyron, San Antonio, Texas 78214.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—Park Operations Update
—Park Foundation Committee Report
—Recognition of Volunteers
—Gifts Catalog Project Report
—Historic American Building Survey (HABS) Exhibit

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, telephone (512) 229-6000.

Minutes of the meeting will be available for public review approximatley four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: August 11, 1983.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 83-22925 Filed 8-19-83; 8:45 am]

BILLING CODE 4310-70-M

Proposed 1983 United States World Heritage Nominations; Addition to U.S. Indicative Inventory of Potential Future Nominations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the identification of the two properties listed herein as proposed 1983 U.S. nominations to the World Heritage List. These properties were selected from among the potential 1983 nominations that were published in the **Federal Register** on June 7, 1983, (48 FR 26369), with a request for public comment. A draft nomination document will be prepared for each property listed herein, and will serve as the basis for determining later this calendar year whether to formally nominate the properties for World Heritage status.

In addition, the June 7, 1983, **Federal Register** notice announced the proposed addition of one area to the U.S. Indicative Inventory of Potential Future Nominations, and requested public comment. This is to give notice of the Department's intention to proceed with the addition of this site to the Indicative Inventory.

DATES: The Federal Interagency Panel for World Heritage will meet in November 1983 to review the accuracy and completeness of the draft nomination documents, and to make recommendations to the Department of the Interior. Subject to this review and necessary approvals, the Assistant Secretary for Fish and Wildlife and Parks will transmit nomination(s) to the United Nations Educational, Scientific, and Cultural Organization (UNESCO), through the Department of State, so that they are received by UNESCO no later than December 31, 1983, for evaluation during 1984. If approved and forwarded to UNESCO, notice of U.S. World Heritage nominations will be published in the **Federal Register** in December 1983.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Wright, Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, now ratified by the United States and 68 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 136 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures that will be used to carry out this legislative mandate (47 FR 23391). These rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; and the Department of State.

Proposed 1983 United States World Heritage Nominations

The one cultural and on natural property listed below have been identified as proposed 1983 U.S. nominations to the World Heritage List. The identification of these properties as proposed nominations indicates that a draft nomination document will be prepared for each property. This document will subsequently be evaluated by the Federal Interagency Panel for World Heritage when it convenes in November 1983, at which time a decision on whether to formally nominate the properties to the World Heritage List will be made.

The following cultural property, indicated by major theme, and natural property, indicated by natural region, have been identified as proposed 1983 U.S. World Heritage nominations. Also listed are the World Heritage criteria that the properties appear most nearly to satisfy:

I. Cultural Property

International Affairs

Statue of Liberty, New York. (40° 37'N; 74° 03'W) French historian Edouard Laboulaye suggested the presentation of this statue to the United States, commemorating the alliance of France and the United States during the American Revolution. The copper colossus was designed by Frederic Auguste Bartholdi and erected according to plans by Gustave Eiffel. *Criteria:* (i) A unique artistic achievement and (iv) an outstanding example of a type of structure which illustrates a significant stage in history.

II. Natural Property

Sierra Nevada

Yosemite National Park, California. (37° 50'N; 119° 30'W) Granite peaks and domes rise high above broad meadows in the heart of the Sierra Nevada, along with groves of sequoias and related tree species. Mountains, lakes, and waterfalls, including five of the world's ten highest, are found here. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Addition to the U.S. Indicative Inventory

No comments were received in response to the earlier announcement of proposed action on this matter. Therefore, the Department of the Interior announces its intention to proceed with the addition of Haleakala National Park to the U.S. Indicative Inventory. Formal notification of this action will be forwarded to the World Heritage Committee.

The addition to the U.S. Indicative Inventory will consist of the following section:

II. Natural Properties

Hawaiian Islands

Haleakala National Park, Hawaii. (20° 40'N; 156° 10'W) With an elevational range from sea level to 3000 m, the park has a great variety of habitats. Alpine deserts, subalpine shrubland, dry forests, subalpine grassland, bogs, rainforests, and coastal vegetation all occur within a linear distance of 25 km. Of international botanical significance, over 95 percent of the species, and 20 percent of the genera of flowering plants are found nowhere else on earth. *Criteria:* (i) An outstanding example representing major stages of the earth's evolutionary history, (ii) outstanding example representing ongoing biological evolution, and (iii) contains superlative natural beauty.

Dated: August 2, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-22927 Filed 8-19-83; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Contract Negotiations With Kennewick Irrigation District, Kennewick, Washington; Intent To Negotiate a Contract for Repayment of an Emergency Loan

The Department of the Interior, through the Bureau of Reclamation, intends to initiate negotiations with the Kennewick Irrigation District, Kennewick, Washington, for the repayment of emergency funds. These funds will be provided pursuant to the Act of June 26, 1948 (62 Stat. 1052), for repair and lining of sections of the district's main canal and related work. Although actual costs are not known at this time, it is estimated that up to $700,000 of emergency funds could be needed by the district for the proposed work.

The Kennewick Irrigation District is part of the Kennewick Division of the Yakima Project, Washington. Due to expectations that the district's main canal could fail and water service would be severely interrupted, the Bureau of Reclamation intends to provide approximately $700,000 of emergency funds to the district as a fully reimbursable loan. The terms and conditions of the proposed emergency loan repayment contract are ultimately dependent on the approval of the

Regional Director, Pacific Northwest Region, Bureau of Reclamation.

The public may observe any negotiation sessions. Advance notice of such meetings, if any, will be furnished upon request. the request must be in writing and must specify that the requesting party is interested in the proposed Kennewick Irrigation District contract. Inquiries shuld be addressed to the Regional Director, Bureau of Reclamation, Attention: 440, 550 West Fort Street, P.O. Box 043, Boise, Idaho 83724.

A proposed draft contract will be made available for public review and comment through August 23, 1983. All written correspondence concerning the proposed contract will be made available for review or inspection upon receipt of a written request pursuant to the Freedom of Information Act (80 Stat. 383), as amended.

For further information on scheduled negotiating sessions and copies of the proposed contract form, please contact Mr. Larry Parsons, Repayment and Statistics Branch, Division of Water, Power, and Lands, Bureau of Reclamation, 550 West Fort Street, P.O. Box 043, Boise, Idaho 83724, telephone (208) 334–9504.

Dated: August 17, 1983.

R. N. Broadbent,

Commissioner of Reclamation.

[FR Doc. 83–23028 Filed 8–19–83; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of approved exemption.

SUMMARY: The motor carriers shown below have been granted 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. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemption will be effective on August 19, 1983.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

and

(2) Petitioners representative(s), as shown below.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

By the Commission, Division 1, acting as an Appellate Division, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving the votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich

Secretary.

[No. MC–F–15139]

Carson Truck Lines, Inc.,—Purchase Exemption—B & G Trucking, Inc., Reentitled, Star Trucking Inc.—Purchase Exemption—B & G Trucking, Inc.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary,

and

(2) Petitioner's representative A. Charles Tell, 100 East Broad St., Columbus, OH 43215.

Pleadings should refer to No. MC–F–15139.

Decided August 16, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(2), the purchase by Star Trucking, Inc. of a portion of the operating rights of B & G Trucking Inc., i.e., Certificate No. MC–146820 (Sub-No. 23), authorizing the transportation of (1) general commodities (with certain exceptions), between points in Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Georgia, Illinois, Indiana, Tennessee, Virginia, and West Virginia on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

[FR Doc. 83–22919 Filed 8–19–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of approved exemption.

SUMMARY: The motor carriers shown below have been granted 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. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemption will be effective on September 21, 1983. Petitions to reopen must be filed by September 12, 1983. Petitions for stay must be filed by September 1, 1983.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

and

(2) Petitioners representative(s), as shown below.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, DC 20423; or call (202) 289–4357 in the DC metropolitan area; or (800) 424–5403 Toll-free outside the DC area.

Agatha L. Mergenovich,

Secretary.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor aid not participate.

[No. MC–F–15171]

U.S. Truck Lines, Inc., of Delaware—Continuance in Control Exemption—Ken-Dale Express, Inc., et al.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary,

and

(2) Petitioner's representative, John C. Bradley, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209.

Pleadings should refer to No. MC–F–15171.

Decided: August 12, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(5), the continuance in control of Ken-Dale Express, Inc., by U.S. Truck Lines, Inc. U.S. Truck Lines, Inc., presently controls, pursuant to Commission approval (1) Be-Mac Transport Company, Inc., MC–10872 and subs thereto, (2) Brown Express, Inc., MC–46054 and subs thereto, (3) Central

Truck Lines, Inc., MC-36473 and subs thereto, (4) The Cleveland, Columbus & Cincinnati Highway, Inc., MC-3419 and 3420 and subs thereto, (5) Kanawha Cartage Company, MC-150148 and subs thereto, (6) Mercury Freight Lines, Inc., MC-113528 and subs thereto, (7) Motor Express, Inc., of Indiana, MC-28813 and subs thereto, (8) Motor Express Inc. (NJ), MC-1778 and subs thereto, (9) National Tank Truck Delivery, Inc., MC-116132 and subs thereto, (10) Ohio Delivery Inc. MC-142758 and subs thereto, and (11) Motor Express Rentals Corporation, MC-164862 and subs thereto.

[No. MC-F-15267]

FCS Industries, Inc.—Control Exemption—Russ's Motor Service, Inc.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603.

Pleadings should refer to No. MC-F-15267.

Decided: August 16, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(e), the acquisition of control through ownership of stock of Russ's Motor Service, a motor carrier of general commodotities, certain specified commodities, on a radial basis between Chicago, IL and points in 5 named States under its Certificate No. MC-145574 (Sub-Nos. 1F and 3), by FCS, a non-carrier which owns B & W Cartage Co., Inc. (No. MC-12094), a motor common carrier with authority to transport general commodities, with exceptions, between points in 34 States.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[No. MC-F-15234]

J.T.I. Transportation Co.—Purchase Exemption—Andrews Van Lines, Inc.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary,

and

(2) Petitioner's representative Jack L. Shultz P.O. Box 82028, Lincoln, NE 68501-2028.

Pleadings should refer to No. MC-15234.

Decided: August 12, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a)(2), the purchase by J.T.I. Transportation Co. (No. MC-159331) of a portion of the operating rights of Andrews Van Lines, Inc., specifically those rights in No. MC-26825 (Sub-No. 68), authorizing the transportation of general commodities (with exceptions), radially between points in Nebraska, and points in the United States.

[No. MC-F-15312]

E. L. Tidd Truck Lines, Inc.—Purchase Exemption—Whiteford Truck Lines, Inc.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary,

and

(2) Petitioners' representative Mr. Donald W. Smith, P.O. Box 40240, Indianapolis, IN 46240.

Pleadings should refer to No. MC-F-15312.

Decided: August 12, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343(a), the purchase by E. L. Tidd Truck Lines, Inc., of a portion of the operating right of Whiteford Truck Lines, Inc. (No. MC-136635 (Sub-Nos. 63, 69, and 71)).

[FR Doc. 83-22920 Filed 8-19-83; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP5-FC-425]

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested persons may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 5, (202) 275-7289.

MC-FC-81631. By decision of August 12, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Carleton, Fortier and Krock approved the transfer to R&T TRUCKS, INC., of Forest City, MO, of Certificates Nos. MC-118529 and Subs 1, 2, and 4, issued June 8, 1959, August 21, 1961, September 1, 1964, and February 2, 1973, respectively, to I&M, INC., Des Moines, IA, authorizing the transportation of (1) crushed limestone and crushed limestone products, between points in Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne Counties, IA, on the one hand, and, on the other, points in Mercer, Harrison, and Worth Counties, MO; (2) limestone and phosphate feed supplements, from Alden, IA, to points in MN, NE, ND, and SD; and (3) crushed limestone and limestone products (a) between points in Union, Clarke, Lucas, Taylor, Ringgold, Decatur, Wayne, and Appanoose Counties, IA, on the one hand, and, on the other, points in Putnam, Schuyler, Sullivan, and Adair Counties, MO, and (b) between points in Appanoose County, IA, on the one hand, and, on the other, points in Mercer, Harrison, and Worth Counties, MO, and (4) sand and gravel between points in Union, Clarke, Lucas, Taylor, Ringgold, Decatur, Wayne, and Appanoose Counties, IA, on the one hand, and, on the other, points

in Mercer, Harrison, Worth, Putnam, Schuyler, and Adair Counties, MO. Representative: Herman W. Huber, 101 E. High Street, Jefferson City, MO 65101.

[FR Doc. 83-22915 Filed 8-19-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers 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** 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 carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

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, water carrier dual operations, 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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.

Agatha L. Mergenovich,

Secretary.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-428

Decided: August 15, 1983.

By the Commission, Review Board Members Carleton, Fortier and Joyce.

MC 57298 (Sub-15), filed August 2, 1983. Applicant: TRAILWAYS TEXAS, INC., 1500 Jackson St., Dallas, TX 75201. Representative: Rebecca Patton, (same address as applicant), (214) 655-7796. Over regular routes, transporting *passengers*, between San Antonio, TX, and Laredo, TX, over Interstate Hwy 35, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c) (2) (B) over the same route.

MC 79658 (Sub-104), filed August 4, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47703. Representative: Michael L. Harvey (same address as applicant), (812) 424-2222. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with PPG Industries, Incorporated, of Pittsburgh, PA.

MC 111729 (Sub-777), filed July 29, 1983. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Peter A. Greene, 1920 N Street, N.W., Washington, DC 20036, (202) 331-8800. Transporting (1) *drugs*, under continuing contract(s) with manufacturers and distributors of drugs, (2) *toiletries*, under continuing contract(s) with manufacturers and distributors of toiletries, and (3) *medical, hospital and research equipment and supplies*, under continuing contract(s) with manufacturers and distributors of medical, hospital and research equipment and supplies, between points in the U.S. (except AK and HI).

MC 129719 (Sub-8), filed July 29, 1983. Applicant: BURRELL TRUCKING, INC., One Fifth St., New Kensington, PA 15068. Representative: David W. Donley, 610 Smithfield St., Suite 400, Pittsburgh, PA 15222, (412) 471-6272. Transporting *ores, minerals, alloys, metal products, building materials, construction aggregates, chemicals and related products*, between points in AL, AZ, CA, CO, DE, GA, ID, IL, IN, KY, MD, MI, MO, MT, NC, NJ, NM, NV, NY, OH, OR, PA, SC, TN, UT, VA, WA, WI, WV, WY, and DC.

MC 15428 (Sub-1), filed July 29, 1983. Applicant: SMOKEY POINT DISTRIBUTING, INC., P.O. Box 189, Arlington, WA 98223. Representative: Matt Berry, (same address as applicant), (206) 435–5737. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 166629 (Sub-2), filed August 3, 1983. Applicant: TRANSPORTATION SERVICES, INC., P.O. Box 962, North Little Rock, AR 72116. Representative: James M. Duckett, 221 W. 2nd St., Suite 411, Little Rock, AR 72201, (501) 375–3022. Transporting *rubber products*, between points in AR, IN, LA, MS, OH, OK, and TX.

MC 168798, filed June 20, 1983. Applicant: ERNEST FULLER, d.b.a. TUMBLEWEED TRANSPORTATION, Route 2, Box 291Q, Farm Road 382, San Marcos, TX 78666. Representative: Ernest Fuller (same address as applicant), 512–353–4556. Transporting *chemicals and related products*, between points in Lea County, NM, on the one hand, and, on the other, points in Otsego County, MI.

MC 169338, filed July 18, 1983. Applicant: KARLER TRUCKING, INC., 9311 Broadway, SE, P.O. Box 1005, Albuquerque, NM 87103. Representative: Larry D. Lucas, 3208 Pan American Freeway, NE, Albuquerque, NM 87107, (505) 883–5573. Transporting *food and related products* between points in OR, CA, NV, UT, AZ, CO, NM, and TX.

Volume No. OP5–429

Decided: August 15, 1983.

By the Commission, Review Board Members Carleton, Dowell and Fortier.

MC 103798 (Sub-59), filed August 4, 1983. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th Street, Minneapolis, MN 55402, (612) 333–1341. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 111729 (Sub-776), filed July 29, 1983. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Rd., New Hyde Park, NY 11042. Representative: Peter A. Greene, 1920 N St., NW, Washington, DC 20036, (202) 331–8800. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of photographic film, between points in the U.S. (except AK and HI), under continuing contract(s) with those engaged in the manufacture, distribution, development, and use of photographic film.

MC 113499 (Sub-10), filed August 2, 1983. Applicant: EDWARD M. RUDE CARRIER CORP., R.F.D. 1, Falling Waters, WV 25419. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814, (301) 986–9030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 157509 (Sub-1), filed August 4, 1983. Applicant: DAN GLODOWSKI, d.b.a. DAN GLODOWSKI TRUCKING, 7747 Merryland Drive, Rosholt, WI 54473. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703, (608) 256–7444. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169569, filed August 1, 1983. Applicant: DONALD HUMBERT, Route 1, Wellington, KS 67152. Representative: Paul V. Dugan, 2707 West Douglas, Wichita KS 67213, (316) 943–2325. Transporting *general commodities* (except classes A and B explosives household goods), between points, in Oklahoma County, OK, on the one hand, and, on the other, points in TX and KS.

MC 169648, filed August 4, 1983. Applicant: GUY CLARK & SON, Route 1, Box 562, Hamilton, AL 35570. Representative: Guy Clark (same address as applicant), (205) 921–3444. Transporting (1) *lumber and wood products*, under continuing contract(s) with W. T. Vick Lumber Co., of Hamilton, AL, and (2) *building materials*, under continuing contract(s) with North River Homes, Inc., Mixon Ace Hardware, Buccaneer Homes Corp., and S & H Supply Co., Inc., all of Hamilton, AL, between points in the U.S.

MC 169679, filed August 4, 1983. Applicant: PYRAMID LINES, INC., 4101 North Sixth Street, Harrisburg, PA 17110. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101, (717) 236–9318. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI). Condition: Issuance of the authority is conditioned upon the approval of the petition for exemption in MCF–15400.

MC 169689, filed August 2, 1983. Applicant: DIAMOND RUG & CARPET MILLS, INC., P.O. Box 46, Eton, GA 30724. Representative: Benjy W. Fincher, P.O. Box 577, 174 North Ave., Jonesboro, GA 30237, (404) 477–1529. Transporting *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 Castellaw Transportation Consultants, Inc., of Jonesboro, GA and Diamond Rug & Carpet Mills, Inc., of Eton, GA.

Volume No. OP5–430

Decided: August 15, 1983.

By the Commission, Review Board Members Fortier, Carleton and Joyce.

MC 25399 (Sub-24), filed August 2, 1983. Applicant: A–P–A TRANSPORT CORP., 2100 88th St., North Bergen, NJ 07047. Representative: George A Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 62658 (Sub-2), filed August 1, 1983. Applicant: LAMBERT TRANSFER COMPANY, INC., 1505 Huntsville Rd., Florence, AL 35630. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229, (804) 282–3809. Transporting *household goods*, between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 121658 (Sub-41), filed August 3, 1983. Applicant: STEVE D. THOMPSON TRUCKING, INC., 710 Prairie Street, Winnsboro, LA 71295. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 121829 (Sub-2), filed July 29, 1983. Applicant: J. S. McCLARY, d.b.a. MACK'S TRANSFER & STORAGE, 211 Ridge Rd., P.O. Box 897, Georgetown, SC 29442. Representative: J. S. McClary, (same address as applicant), (803) 546–5377. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI).

MC 128798 (Sub-12), filed August 4, 1983. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Rd., Larchmont, NY 10538. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, (212) 838–0600. Transporting *such commodities* as are dealt in or used by manufacturers, distributors, or dealers of pulp, paper and related products, building materials, and chemicals, between points in the U.S. (except AK and HI), under

continuing contract(s) with persons as defined in section 10923 of the Motor Carrier Act of 1980 who are engaged in business as manufacturers, distributors, or dealers of pulp, paper and related products, building materials, and chemicals.

MC 140829 (Sub-375), filed August 3, 1983. Applicant: CARGO, INC., P.O Box 206 U.S. Highway 20, Sioux City, IA 51102. Representative: Charles G. Peterson (same address as applicant), (402) 494–5141. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contract(s) with Ashland Chemical Company, of Dublin, OH; Kerr McGee Corporation of Oklahoma City, OK, and Ralston Purina Company, of St. Louis, MO.

MC 141529 (Sub-3), filed August 1, 1983. Applicant: WAINWRIGHT TRANSFER CORP. OF VIRGINIA, P.O Box 1854, Quantico, VA 22134. Representative: Paul F. Sullivan, Suite 202, 3408 Wisconsin Ave., NW., Washington, DC 20016, (202) 363–1848. Transporting *household goods*, between those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 148649 (Sub-2), filed August 2, 1983. Applicant: H & W, INC., 2411 LaFayette Parkway, Opelika, AL 36801. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd, P.O Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *lumber and wood products*, between points in NC, SC, GA, FL, AL, MS, TN, KY, and LA.

MC 150278 (Sub-2), filed July 28, 1983. Applicant: BODIN'S INC., P.O Box 687, Bayfield, WI 54814. Representative: John L. Bruemmer, P.O Box 927, Madison, WI 53701, (608) 257–9521. Transporting (1) *bicycles, motorcycles, and sporting goods*, between points in IL, MI, MN, and WI, and (2) *food and related products*, between points in IL, MI, MN, MO, and WI.

MC 151758 (Sub-1), filed August 2, 1983. Applicant: MARVIN HUNT, d.b.a. HUNT TRUCKING CO., P.O. Box 491, Stone Mountain, GA 30086. Representative: Virgil H. Smith, 74 Highway N. Box 245, Tyrone, GA 30290, (404) 969–1980. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries to Team 2, (202) 275–7030.

Volume No. OP2–356

Decided: August 12, 1983.

By the Commission, Review Board Members, Dowell, Joyce, and Fortier.

MC 2202 (Sub-697), filed July 20, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. Transporting *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 Miles Carpets, Inc., of Dalton, GA.

MC 2202 (Sub-698), filed July 20, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. Transporting *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 Queen Carpet Corp., of Dalton, GA.

MC 2202 (Sub-699), filed July 20, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. Transporting *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 Lockheed Corporation, of Burbank, CA.

MC 87113 (Sub-39), filed July 26, 1983. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006, 202–833–8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Manville Service Corporation, of Denver, CO, and its subsidiaries.

MC 107012 (Sub-848), filed July 20, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Representative: Margaret S. Vegeler (same address as applicant), 219–429–2213. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Digital Equipment Corporation, of Maynard, MA.

MC 107012 (Sub-849), filed July 25, 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 address as applicant), 219–429–2110. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Dart & Kraft, Inc., of Northbrook, IL.

MC 107012 (Sub-850), filed July 25, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Representative: David D. Bishop (same address as applicant), 219–429–2110. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Combined Insurance Company of America, of Northbrook, IL.

MC 164403, filed July 15, 1983. Applicant: JAMES L. DAVIS, d.b.a. TRIPCO TRUCKING, 1106 West Sheridan, Shenandoah, IA 51601. Representative: James L. Davis (same address as applicant), 712–246–4604. Transporting (1) *machinery*, between points in Harrison County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *soaps*, (3) *food and related products*, (4) *glass*, (5) *soda ash* and (6) *sesquicarbon*, between points in Page and Fremont Counties, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168892, filed July 11, 1983. Applicant: ROBERT L. SCHIMMEL, 2500 Wagon Circle Rd., P.O. Box 1946–West of Rawlins, Rawlins, WY 82301. Representative: Charles E. Greenhawt, 313 4th St., Rawlins, WY 82301, 307–324–6625. Transporting *modular and sectional building units, wheeled undercarriages for the aforementioned units, and mobile homes*, between points in WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169402, filed July 22, 1983. Applicant: LONG'S PORTABLE STALLS, INC., 8938 James Rd. SW., Rochester, WA 98579. Representative: Dennis G. Long (same address as applicant), 206–273–9252. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Cascade West Transportation Brokers, of Lake Oswego, OR.

[FR Doc. 83-22923 Filed 8-19-83; 8:45 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.

Agatha L. Mergenovich,

Secretary.

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."

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–427

Decided: August 15, 1983.

By the Commission, Review Board Members Carleton, Fortier and Joyce.

MC 166908, filed August 4, 1983. Applicant: CARWELL ELEVATOR CO., INC., P.O. Box 187, Cherry Valley, AR 72324. Representative: Thomas A. Stroud, 109 Madison Ave., Memphis, TN 38103, (901) 526–2900. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169578, filed July 28, 1983. Applicant: RICELAND FOODS, INC., d.b.a. RICELAND TRANSPORTATION SERVICES DIVISION, Park Avenue, Stuttgart, AR 72160. Representative: Charles A. Gunnell, P.O. Box 927, Stuttgart, AR 72160, (501) 673–5500. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169678, filed August 2, 1983. Applicant: PIEDMONT TOURS, INC., 33 Main St., Pelzer, SC 29669. Representative: Maxwell A. Howell, 2554 Massachusetts Ave., NW., Washington, DC 20008, (202) 483–8633. 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 to Team 2, (202) 275–7030.

Volume No. OP2–355

Decided: August 12, 1983.

By the Commission, Review Board Members Joyce, Williams, and Dowell.

MC 118522 (Sub–6), filed July 28, 1983. Applicant: PIEDMONT COACH LINES, INC., 3636 Glenn Ave., Winston-Salem, NC 27105. Representative: Steven L. Weiman, Ste. 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840–8565. 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 121572 (Sub-5), filed July 5, 1983. Applicant: TRANS STATE BUS, INC., Rt. 1, Larned, KS 67550. Representative: Eugene W. Hiatt, 627 S. Topeka Ave., Topeka, KS 66603, 913–232–7263. Transporting *passengers* (1) over *REGULAR ROUTES* (1) between Dalhart, TX, Pratt and El Dorado, KS, and Nevada, MO, over U.S. Hwy 54, (2) between Liberal, KS and North Platte, NE, over U.S. Hwy 83, serving Colby, KS, as an off-route point, (3) between Liberal and Ulysses, KS, over U.S. Hwy 270, (4) between Ulysses and Lakin, KS, over U.S. Hwy 25, (5) between Lakin, Dodge City, Hutchinson, Junction County Blacktop (south of Halstead), Junction KS Hwy 150, and Emporia, KS, over U.S. Hwy 50, (6) between Satanta and Herington, KS, over U.S. Hwy 56, (7) between Phillipsburg and La Crosse, KS, over U.S. Hwy 183, (8) between La Crosse and Hoisington, KS, over KS Hwy 4, (9) between Hoisington and Great Bend, KS, over U.S. Hwy 281, (10) between Lyons and Wichita, KS, over KS Hwy 96, (11) between Pratt and McPherson, KS: from Pratt over U.S. Hwy 281 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction KS Hwy 61, near Partridge, KS, then over KS Hwy 61 to Hutchinson, KS, and then over KS Hwy 61 to McPherson, (12) between Wichita and El Dorado, KS, over the KS Turnpike, (13) between Wichita, Newton, McPherson, and Salina, KS, over Interstate Hwy 135, (14) between Salina and Junction City, KS, over Interstate Hwy 70, (15) between Junction City and Manhattan, KS, over (a) KS

Hwy 18 and (b) Military Post Road, (16) between Junction City and Herington, KS, over U.S. Hwy 77, (17) between Junction U.S. Hwy 56 and Junction U.S. Hwy 50, over KS Hwy 150, (18) between Hillsboro, KS and Junction U.S. Hwy 50, over N-S County Blacktop, (19) between Philipsburg and Smith Center, KS, over U.S. Hwy 36, (20) between Junction Interstate Hwy 135 and El Dorado, KS, over KS Hwy 196, and (21) serving all intermediate points in routes (1) through (20) above; and (II) in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Part (I)—applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

Part (II)—applicant seeks to provide privately-funded charter and special transportation.

Part (II) is published in the **Federal Register**, this issue, under the preface with "fitness applications".

MC 139112 (Sub-26), filed July 25, 1983. Applicant: CALEX EXPRESS, INC., R.D. #2, Rt. 29, Hunlock Creek, PA 18621. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517, (717) 344–8030 or 562–1202. As a *broker of general commodities* (except household goods), between points in the U.S. (except HI).

MC 140273 (Sub-38), filed July 20, 1983. Applicant: BUESING BROS. TRUCKING, INC., 2285 Daniels St., Long Lake, MN 55356. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, 612–542–1121. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 158872 (Sub-2), filed August 3, 1983. Applicant: CHEM-TRUCK, INC., 960 U.S. Highway 1 North, Edison, NJ 08817. Representative: Morton E. Kiel, Suite 1832—2 World Trade Center, New York, NY 10048, 212–466–0220. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162943 (Sub-2), filed June 27, 1983. Applicant: COLORADO TRANSPORTATION GROUP, INC., d.b.a. ALPINE CHARTER COACHES, INC., 1000 Lionsridge Loop, Vail, CO 81657. Representative: James B. Rea (same address as applicant), 303–296–9102. Transporting *passengers and their baggage and smal packages*, between points in the U.S. (except AK and HI), under continuing contract(s) with Frontier Services Co., of Denver, CO.

MC 167472, filed August 3, 1983. Applicant: TRANSPORTES RAPIDO, INC., 419 E. 6th St., Los Angeles, CA 90014. Representative: Victor M. Hatem (same address as applicant), 213–622–0362. Transporting *passengers*, in charter and special operations, beginning and ending at ports of entry on the International Boundary line between the U.S. and the Republic of Mexico at points in CA, and extending to points in the U.S. (except AK and HI).

MC 168873, filed June 24, 1983. Applicant: BRUCE PATTERSON d.b.a. PATTERSON TRUCK SERVICE, 1636 Hialeah Dr., Modesto, CA 95350. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207, (209) 957–6128. Transporting (1) *textile mill products*, (2) *lumber and wood products*, (3) *pulp, paper and related products*, (4) *printed matter*, (5) *chemcials and related products*, (6) *rubber and plastic products*, (7) *metal products*, (8) *machinery*, and (9) *instruments and photographic goods*, between points in CA, OR, and WA; and (10) *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).

Note.—Parts (1) through (9) are published, this issue, under the preface with the "regular" applications. Part (10) is published, this issue, under the preface with the "fitness-only" applications.

MC 169472, filed July 27, 1983. Applicant: INEX TRUCKING COMPANY, INC., 746 Birginal Dr., Bensenville, IL 60106. Representative: Peter Peccia (same address as applicant), 312–860–2450. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169473, filed July 27, 1983. Applicant: INTRA AMERICAN EQUIPMENT CO., INC., P.O. Box 5446, Carson, CA 90749. Representative: Milton W. Flack, 8484 Wilshire Blvd., No. 840, Beverly Hills, CA 90211, 213–655–3573. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169492, filed July 28, 1983. Applicant: EMANUEL J. WERNER, 791 SE #7 Ave., Pompano Beach, FL 33060. Representative: Emanuel J. Werner, P.O. Box 471, Pompano Beach, FL 33060, 305–942–1933. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169502, filed July 27, 1983. Applicant: EARL WARREN ANDERSON, d.b.a. VERNON CHARTER SERVICE LTD., 4214 26th Ave., P.O. Box 1235, Vernon, B.C., Canada V1T 6N6. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, 206–228–3807. 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 169503, filed July 27, 1983. Applicant: DEL-MED, INC., 5216 Schuyler St., Philadelphia, PA 19144. Representative: Robert B. Peper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201–572–5551. 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 169512, filed July 27, 1983. Applicant: PRINCESS TOURS CO., INC., 140 Sheldon Ave., Staten Island, NY 10313. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, 212–838–0600. 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 169542, filed July 28, 1983. Applicant: DOUG W. SINCLAIR, P. O. Box 26908, Salt Lake City, UT 84126. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202–3357, 303–892–6700. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169573, filed August 1, 1983. Applicant: THOMAS J. OBRIEN, 7163 Swadley Court Arvada, CO 80004. Representative: Roger L. Buchanan, 1020 W. 100th Pl., Denver, CO 80221, 303–452–2055. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169613, filed August 3, 1983. Applicant: MAUREEN AND GERARD SUMMA, d.b.a. FREDDIE'S LIMOUSINE SERVICE, 7 Cesario Place, Port Chester, NY 10573. Representative: Robert M. O'Donnell, 145 W. Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting *passengers*, in charter and special operations, between points in CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169532, filed July 29, 1983. Applicant: EXECU-TRAVEL, INC., 6036 Angora Terrace, Philadelphia, PA 19143. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215)

561–1030. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

Volume No. OP2–357

Decided: August 12, 1983.

By the Commission, Review Board Members, Fortier, Carleton, and Krock.

MC 57622 (Sub-10), filed August 1, 1983. Applicant: BANGOR AND AROOSTOOK RAILROAD COMPANY, Northern Maine Junction Park, RR 2, Bangor, ME 04401. Representative: William M. Houston (same address as applicant), 207–848–5711. Transporting *passengers*, in charter and special operations, beginning and ending at points in ME, and extending to points in the U.S. (except AK and HI).

Note.—Applicant receives governmental financial assistance for the purchase or operation of buses, or is an operator for such a recipient.

MC 110683 (Sub-218), filed August 1, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont Ave. NW., Washington, DC 20005, 202–783–8131. Transporting *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 J. C. Penney Company, Inc., of New York City, NY.

MC 110683 (Sub-219), filed August 1, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont Ave. NW., Washington, DC 20005, 202–783–8131. Transporting *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 The Goodyear Tire and Rubber Company, of Akron, OH.

MC 140163 (Sub-7), filed July 28, 1983. Applicant: POST & SONS TRANSFER, INC., 2326 Milwaukee Way, P.O. Box 605, Tacoma, WA 98421. Representative: George R. LaBissoniere, 15 S. Grady Way—Suite 239, Renton, WA 98055, 206–228–3807. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WA, OR, CA, ID, NV, MT, WY, CO, UT, AZ, NM, TX, OK, KS, NE, SD, ND, MN, IA, AR, and AK.

MC 165093, filed August 2, 1983. Applicant: HOLLIS RAINES, d.b.a. RAINES TRUCKING, Rt. 1, Box 363, Munford, AL 36268. Representative: John R. Frawley, Jr., P.O. Box 66111, Irondale, AL 35210, 205–956–9749. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 167453, filed August 2, 1983. Applicant: EVERGREEN, INC., 30 South St., P.O. Box 138, Berlin Heights, OH 44814. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215, 614–228–1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168873, filed June 24, 1983. Applicant: BRUCE PATTERSON, d.b.a. PATTERSON TRUCK SERVICE, 1636 Hialeah Dr. Modesto, CA 95350. Representative: Arden Riess, P.O. Box 7965 Stockton, CA 95207, (209) 957–6128. Transporting (1) *textile mill products*, (2) *lumber and wood products*, (3) *pulp, paper and related products*, (4) *printed matter, (5) chemicals and related products*, (6) *rubber and plastic products*, (7) *metal products*, (8) *machinery*, and (9) *instruments and photographic goods*, between points in CA, OR, and WA; and (10) *food and other edible products and byproducts intended for human consumption* (except alcholic 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).

Note.—Parts (1) through (9) are published, this issue, under the preface with the "regular" applications. Part (10) is published, this issue, under the preface with the "fitness-only" applications.

MC 169143, filed July 11, 1983. Applicant: BERLIN MINERAL CO., St. Rt. 39, P.O. Box 295, Berlin, OH 44610. Representative: James Duvall, 220 W. Bridge St. P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *clay, concrete, glass or stone products, and coal and coal products*, between points in OH, on the one hand, and, on the other, points in IN, KY, MI, NY, PA, and WV.

MC 169533, filed July 29, 1983. Applicant: AMERICAN CARRIERS EXPRESS, INC., Ste. 126, 11500 Stemmons Freeway, Dallas, TX 75229. Representative: Harry F. Horak, P.O. Box 294, Cherokee, TX 76832, (915) 622–4495. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

Volume No. OP–2–358

Decided: August 12, 1983.

By the Commission, Review Board, Members Dowell, Carleton, and Joyce.

MC 110683 (Sub-217), filed July 27, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont Ave., N.W. Washington, DC 20005, 202–783–8131. Transporting *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 Corning Glass Works, of Corning, NY.

MC 112822 (Sub-496), filed July 15, 1983. Applicant: BRAY LINES INCORPORATED, 1401 North Little St., Cushing, OK 74023. Representative: Steven B. Cochran (same address as applicant) 918–255–0365. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with persons engaged in the manufacture, processing, sale, and distribution of petroleum products.

MC 121572 (Sub-5), filed July 5, 1983. Applicant: TRANS STATE BUS, INC., Rt. 1, Larned, KS 67550. Representative: Eugene W. Hiatt, 627 S. Topeka Ave., Topeka, KS 66603, 913–232–7263. Transporting *passengers* (I) over *REGULAR ROUTES* (1) between Dalhart, TX, Pratt and El Dorado, KS, and Nevada, MO, over U.S. Hwy 54, (2) between Liberal, KS and North Platte, NE, over U.S. Hwy 83, serving Colby, KS, as an off-route point, (3) between Liberal and Ulysses, KS, over U.S. Hwy 270, (4) between Ulysses and Lakin, KS, over U.S. Hwy 25, (5) between Lakin, Dodge City, Hitchinson, Junction County Blacktop (south of Halstead), Junction KS Hwy 150, and Emporia, KS, over U.S. Hwy 50, (6) between Satanta and Herington, KS, over U.S. Hwy 56, (7) between Phillipsburg and La Crosse, KS, over U.S. Hwy 183, (8) between La Crosse and Hoisington, KS, over KS Hwy 4, (9) between Hoisington and Great Bend, KS, over U.S. Hwy 281, (10) between Lyons and Wichita, KS, over KS Hwy 96, (11) between Pratt and McPherson, KS: from Pratt over U.S. Hwy 281 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction KS Hwy 61, near Partridge, KS, then over KS Hwy 61 to Hutchinson, KS, and then over KS Hwy 61 to McPherson, (12) between Wichita and El Dorado, KS, over the KS Turnpike, (13) between Wichita, Newton, McPherson, and Salina, KS, over Interstate Hwy 135, (14) between

Salina and Junction City, KS, over Interstate Hwy 70, (15) between Junction City and Manhattan, KS, over (a) KS Hwy 18 and (b) Military Post Road, (16) between Junction City and Herington, KS, over U.S. Hwy 77, (17) between Junction U.S. Hwy 56 and Junction U.S. Hwy 50, over KS Hwy 150, (18) between Hillsboro, KS and Junction U.S. Hwy 50, over N–S County Blacktop, (19) between Phillipsburg and Smith Center, KS, over U.S. Hwy 36, (20) between Junction Interstate Hwy 135 and El Dorado, KS, over KS Hwy 196, and (21) serving all intermediate points in routes (1) through (20) above; and (II) in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Part (I)—applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

Part (II)—applicant seeks to provide privately-funded charter and special transportation.

Part (I) is published in the **Federal Register**, this issue, under the preface with "regular applications."

MC 141753 (Sub-2), filed August 3, 1983. Applicant: G. P. SULLIVAN COMPANY, 1808 South Laramie Ave., Cicero, IL 60650. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, 517–482–2400. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, WI, IA, MO, MN, OH, MI, KY and NE.

MC 154303 (Sub-1), filed July 15, 1983. Applicant: BOBBY JOE TRUCKING, INC., P.O. Box 1050, Phoenix, OR 97535. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210, 503–226–3755. Transporting *lumber and wood products, building materials, metal products, and chemicals*, between those points in the U.S., in and west of MT, WY, CO, and NM (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169263, filed July 18, 1983. Applicant: A.V.L., INC., 2039 Village Lane, Solvang, CA 93464. Representative: Richard B. Felder, 1000 Potomac St. NW., Suite 501, Washington, DC 20007, 202–337–0104. Transporting *horses*, other than ordinary, between points in the U.S. (except AK and HI).

MC 169392, filed July 21, 1983. Applicant: CHARLES B. ATWELL, 179 Center St., Pittston, PA 18640. Representative: Edward F. V. Pietrowski, 336 Scranton Life Bldg., Scranton, PA 18503, 717–343–2126. Transporting *petroleum and petroleum products*, between points in Hancock County, WV, on the one hand, and, on the other, points in PA.

Volume No. OP–2–359

Decided: August 12, 1983.

By the Commission, Review Board, Members Carleton, Dowell, and Williams.

MC 2202 (Sub-703), filed July 26, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. Transporting *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 Oshman's Sporting Goods, Inc., of Houston, TX.

MC 2202 (Sub-704), filed July 26, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 301–986–1410. Transporting *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 Barrett Carpet Mills, of Dalton, GA.

MC 107012 (Sub-845), filed July 13, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Representative: Margaret S. Vegeler (same address as applicant), 219–429–2213. Transporting *elevators and elevator parts*, between points in the U.S., under continuing contract(s) with Otis Elevator Company, of Bloomington, IN.

MC 107012 (Sub-852), filed July 26, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Ft. Wayne, In 46801. Representative: Margaret S. Vegeler (same address as applicant), 219–429–2213. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Coherent, Inc., of Palo Alto, CA.

MC 107012 (Sub-853), filed July 26, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant) 219–429–2234. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with American Woodmark Corporation, of Berryville, VA.

MC 107012 (Sub-854), filed July 26, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant) 219–429–2234. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Modern Mode Furniture, of Oakland, CA.

MC 107012 (Sub-855), filed July 26, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant) 219–429–2110. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Hon Industries, of Muscatine, IA.

MC 110683 (Sub-216), filed July 27, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA. 24401. Representative: Harry J. Jordan, 1090 Vermont Ave., N.W., Washington, DC 20005; 202–783–8131. Transporting *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 Lockheed Corporation, of Burbank, CA.

MC 153723 (Sub-14), filed August 3, 1983. Applicant: A & M ENTERPRISES, INC., 4808 Johnson Rd., Springdale, AR 72764. Representative: David E. Driggers, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO. 80264; 303–861–4028. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 169553, filed July 27, 1983. Applicant: KENNETH W. KILGORE d.b.a. KILGORE LINE, 9953 Vieux Carré Dr., Louisville, KY 40223. Representative: John M. Nader, 1600 Citizens Pl., Louisville, KY 40202; 502–589–5400. Transporting (1) *food and related products*, (2) *metal products*, (3) *building and construction materials*, (4) *chemicals and related products*, and (5) *automotive products*, between points in the U.S. (except AK and HI), under continuing contracts(s) with manufacturers, distributors, retailers, and users of the above-named commodities.

MC 169572, filed August 1, 1983. Applicant: SOUTHERN TIER TRANSPORTATION, DIVISION OF SOUTHERN TIER HIDE & TALLOW, INC., R.D. 2, Maple Ave., Elmira, NY 14901. Representative: Terrence D. Jones, 2033 K St., NW., Washington, DC 20006; 202–429–9090. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

Volume No. OP–2–360

Decided: August 15, 1983.

By the Commission, Review Board, Members Carleton, Williams, and Fortier.

MC 2202 (Sub-702), filed July 25, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814; 301–986–1410. Transporting *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 Diamond Carpet Mills, of Eton, GA.

MC 107012, filed July 25, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Ft. Wayne, IN 46801. Representative: David D. Bishop (same address as applicant) (219) 429–2110. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Aetna Life & Casualty, of Hartfort, CT.

MC 111302 (Sub-181), filed July 26, 1983. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10108, 1500 Amherst Rd., Knoxville, TN 37939–0108. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425—13th St. NW., Washington, DC 20004; 202–737–1030. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ashland Chemical Company, Division of Ashland Oil, Inc., of Dublin, OH.

MC 112713 (Sub-343), filed July 25, 1983. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Ave., Overland Park, KS 66207. Representative: William F. Martin, Jr. (same address as applicant) (913) 383–3000. Transporting *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 Emerson Electric Co., of St. Louis, MO.

MC 139843 (Sub-24), filed August 1, 1983. Applicant: VERNON G. SAWYER, P.O. Drawer B, Bastrop, LA 71220. Representative: James R. Holt, P.O. Box 523, Collierville, TN 38017; 901–853–7208. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Georgia-Pacific Corporation, of Atlanta, GA.

MC 147242 (Sub-20), filed July 29, 1983. Applicant: PLAZA FREIGHT TRANSPORT, INC., 12–90 Plaza Rd., Fair Lawn, NJ 07410. Representative: Arthur Liberstein, 888 Seventh Ave., New York, NY 10106; (212) 757–8025. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with manufacturers, distributors, and dealers of chemicals and related products.

MC 151742 (Sub-5), filed July 25, 1983. Applicant: TEAM TRANSPORT, INC., P.O. Box 397, Warrendale, PA 15086. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222; (412) 471–3300. Transporting *metal products and machinery*, between points in the U.S., (except AK and HI), under continuing contract(s) with manufacturers, distributors, wholesalers and retailers of metal products and machinery.

MC 156882 (Sub-1), filed August 3, 1983. Applicant: L.D. YOUNG, INC., 351 Hartwell, P.O. Box 26855, Salt Lake City, UT 84126. Representative: Steven D. Crawley, Suite 107, 2225 East Murray-Holladay Rd., Salt Lake City, UT 84117; 801–272–7462. Transporting *Salt*, between points in UT, NV, and CA, under continuing contract(s) with Leslie Salt Company, of salt Lake City, UT.

MC 157343 (Sub-2), filed August 3, 1983. Applicant: GOLD TRANSIT SYSTEMS, INC., P.O. Box 26203, Oklahoma City, OK 73126. Representative: William P. Parker, 4400 N. Lincoln, Suite 10, Oklahoma City, OK 73105; 405–424–3301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 158012 (Sub-2), filed August 1, 1983. Applicant: HENRY L. TAYLOR, Box 173, R.D. 1, Biglerville, PA 17307. Representative: David H. Radcliff, 407 N. Front St., Harrisburg, PA 17101; (717) 238–7151. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 168952, filed June 27, 1983. Applicant: BETTY LIVINGSTON d.b.a. R & L LUMBER & SUPPLY, Route 1, Box 83, Gordo, AL 35466. Representative: Betty Livingston (same address as applicant) (205) 364–7647. Transporting *lumber and wood products*, and *metal products*, between points in Lamar County, AL, on the one hand, and, on the other, Louisville, KY, Grand Rapids, MI, and Toledo, OH, and points in Floyd County, GA, Calhoun County, MS, and Jasper County, IN.

MC 169233, filed July 15, 1983. Applicant: RICHARD E. EDSON & DWIGHT R. EDSON d.b.a. EDSON TRUCKING CO., 2618 North Haven Dr., Gothenburg, NE 69138. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106; (402) 392–1220. Transporting *such commodities* as are dealt in by packinghouses, between points in NE, SD, TX, IA, KS, CO, OK, MO, ND, and MN.

Volume No. OP–2–361

Decided: August 15, 1983.

By the Commission, Review Board, Members Williams, Dowell, and Carleton.

MC 14623 (Sub-2), filed July 25, 1983. Applicant: G.C. HEMPHILL TRUCKING, INC., P.O. Box 404, Burgettstown, PA 15021. Representative: Sally A. Davoren, 1500 Bank Tower, 307 4th Ave., Pittsburgh, PA 15222; 412–471–3300. Transporting *general commodities* (except classes A and B explosives and household goods), between points in CT, DE, IL, IN, IA, KY, MD, MI, NJ, NY, PA, VA, WV, OH, and WI.

MC 69322 (Sub-14), filed July 22, 1983. Applicant: DOBSON CARTAGE AND STORAGE COMPANY, 5024 South Garfield Rd., Auburn, MI 48611. Representative: Robert J. Gallagher, 1435 G St. NW., Suite 848, Washington, DC 20005; 202–628–1642. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Moving Systems, Inc., of Newburyport, MA, and Multiple Technologies, of Southfield, MI.

MC 87113 (Sub-38), filed July 22, 1983. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006; 202–833–8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Martin Marietta Corporation, of Bethesda, MD.

MC 112713 (Sub-344), filed July 27, 1983. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Ave., P.O Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr. (same address as applicant); 913–383–3000. Transporting *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 Mobay Chemical Corporation, of Pittsburgh, PA.

MC 112713 (Sub-345), filed July 26, 1983. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Ave., P.O Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr. (same address as applicant); 913–383–3000. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Miles Laboratories, Inc., of Elkhart, IN.

MC 112713 (Sub-346), filed July 27, 1983. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Ave., P.O Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr. (same address as applicant); 913–383–3000. Transporting *hazardous materials*, between points in the U.S. (except AK and HI). Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from the date of its issuance.

MC 150633 (Sub-3), filed July 27, 1983. Applicant: MERTENS TRUCKING CO., INC., 4215 Terminal Drive, McFarland, WI 53558. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719; 608–273–1003. Transporting *petroleum, natural gas and their products, chemicals, and transportation equipment*, between points in IA, IL, IN, MI, MN, MO, ND, SD, and WI.

MC 152302 (Sub-2), filed July 13, 1983. Applicant: CHARLES E. ARMES, 917 West 9th St., Jonesboro, IN 46938. Representative: Charles E. Armes (same address as applicant) 317–674–4834. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 169522, filed July 27, 1983. Applicant: FLEET TRANSPORT SERVICES, P.O. Box 28, Jackson, WI 53037. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge #832, Portage, WI 53901; 608-742–3579. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 169523, filed July 27, 1983. Applicant: JOHN WILLIAM SHEARIN, JR. d.b.a. JOHN W. SHEARIN, JR. TRUCKING, P.O. Box 123, Hwy 158, Vaughan, NC 27586. Representative: John William Shearin, Jr. (same address as applicant) 919–586–3297. Transporting *pallets, crates, and boxes*, between points in Warren County, NC, on the one hand, and, on the other, points in VA, under continuing contract(s) with General Box Company, of Toledo, OH.

[FR Doc. 83–22924 Filed 8–19–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions, Restriction Removals; Decision-Notice

Decided: August 15, 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.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 5, at (202) 275–7289.

Volume No. OP5–426

By the Commission, Review Board Members Carleton, Fortier, and Joyce.

MC 147778 (Sub-2X), Filed July 29, 1983. Applicant: ACTION FREIGHT LINE, INC., P.O. Box 217, Humansville, MO 65674. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309 (515) 244–2329. Sub 1 certificate: broaden (I) regular route (1) general commodities (except classes A and B explosives, household goods and commodities in bulk) from general commodities (with exceptions); (2) remove restriction against traffic between Weaubleau, MO, on the one hand, and, on the other, Bolivar, MO, and Springfield, MO; (3) remove restrictions against serving intermediate points, and replace authority to serve a named point and named off-route points to county-wide authority; (a) Osceola, MO, to St. Clair County, MO, (b) Caplinger Mills, MO, to Cedar County, MO, (c) Pommede Terre State Park MO, to Hickory County, MO, (d) Kaysinger, Dam, Rondo, Sentinel and Red Top, MO, to Polk County, MO, and (e) La Due, Blairstown and Leeton, MO, to Henry and Johnson Counties, MO, and (II) irregular route, broaden Humansville, MO, to Polk County, MO.

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–553

By the Commission, Review Board Members Fortier, Carleton, and Dowell.

MC 123406 (Sub-No. 2X), filed July 27, 1983. Applicant: BERVERAGE TRANSIT, INC., P.O. Box 171, Stratford, WI 54484. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086 (608) 238–3119. Lead Certificate, (1) broaden (cheese, butter and cream, and eggs and live and dressed poultry, when moving in the same vehicle at the same time with cheese, butter and cream; groceries, creamery supplies and empty containers for eggs and poultry, and fruits and vegetables, when moving in the same vehicle at the same time with groceries, creamery supplies and empty containers for eggs and poultry) to "food and related products"; (2) one way authority to two-way radial authority; and (3) to countywide authority: Marshfield, WI (Marathon and Wood Counties), Chicago, IL (Cook, Du Page, Kent, Kendall, Lake and Will Counties, IL, and Lake, La Porte and Porter Counties, IN).

[FR Doc. 83–22917 Filed 8–19–83; 8:45 am]

BILLING CODE 7035–01–M

[OP3–MCF–390]

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

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).

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 276–7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the office of the Interstate Commerce Commission during usual business hours.

Decided: August 15, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[No. MC–F–15366]

Mel-Ro Transport, Inc.—Purchase Exemption—Andrews Van Lines, Inc.

Mel-Ro Transport, Inc. (No. MC–154580) and Andrews Van Lines, Inc. (No. MC–26825) seek an exemption from the section 11343 requirement of prior regulatory approval for the purchase by Mel-Ro from Andrews of Certificate Nos. MC–26825 (Sub–Nos. 53 and 67), issued July 30, 1981 and May 27, 1982 respectively.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423, and

(2) Petitioner's representative: Nelson & Harding and Jack L. Schultz, P.O. Box 82028, Lincoln, NE 68501–2028.

Comments should refer to No. MC–F–15366.

[FR Doc. 83–22918 Filed 8–19–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier; Temporary Authority Applications

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 1162.3. 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

Notice No. F–286

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 22675 (Sub-1–3TA), filed August 10, 1983. Applicant: ALLSTATES VAN LINES CORP., 79–17 Albion Avenue, Elmhurst, NY 11373. Representative: Robert J. Gallagher, Esq., 1435 G Street, N.W., Suite 848, Washington, DC 20005. *Household goods, as defined by the Commission*, from Las Vegas, NV to Bloomfield, MI; from Ft. Ord, CA to Aurora, CO; from Ft. Ord, CA to Omaha, NE; and from Marina, CA to Fort Lewis, WA. Supporting shipper: Allstates Worldwide Movers, Inc., 79–17 Albion Avenue, Elmhurst, NY 11373.

MC 134806 (Sub-1–70TA), filed August 8, 1983. Applicant: B–D–R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *Slate products* between Sudbury, VT, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA and WY, under continuing contract(s) with Smid Incorporated, Brandon, VT. Supporting shipper: Smid Incorporated, RD #1, Brandon, VT 05733.

MC 149030 (Sub-1–6TA), filed August 8, 1983. Applicant: COUSINS LEASING CORP., Arnold Drive, Huntington, NY 11743. Representative: George Carl Pezold, Esq., Augello, Pezold & Hirschmann, P.C., 120 Main Street, Huntington, NY 11743. *Contract carrier:* irregular routes: *(1) Paper Paperboard, Plastic & Wood Products, and materials, supplies and equipment used in the manufacture, sale and distribution of same;* and *Paper and Paperboard Scrap for recycling*, under continuing contract(s) with Stone Container Corporation of Chicago, IL, and its wholly-owned subsidiaries; *(2) Foodstuffs and Beverages*, under continuing contract(s) with A. Fodera & Sons, Inc. of Corona, NY; *(3) Sugar, Dextrose, Salt and Starches*, under continuing contract(s) with Indiana Sugars, Inc. of Gary, IN; between points in the U.S. (except AK and HI). Supporting shipper: Stone Container Corporation, 360 N. Michigan Ave., Chicago, IL 60601; A. Fodera & Sons, Inc., 129–02 Northern Blvd., Corona, NY; Indiana Sugars, Inc., 911 Virginia St., Gary, IN 46402.

MC 169789 (Sub-1–1TA), filed August 8, 1983. Applicant: FLOWER CITY TRANSFER, 919 Ridge Road, Webster, NY 14580. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. *Contract carrier:* irregular routes: *Such commodities as are dealt in by a floor covering distributor*, between points in PA and NY, under continuing contract(s) with Stuart Lerman, Inc. of Buffalo, NY and Wittenberg Distributors Inc. of Rochester, NY. Supporting shipper(s): Stuart Lerman, Inc., 2495 Walden Avenue, Buffalo, NY; Wittenberg Distributors Inc., 205 St. Paul Street, Rochester, NY.

MC 157163 (Sub-1–2TA), filed August 3, 1983. Applicant: FLIGHT LINE, INC., 3 Hillside Avenue, Amesbury, MA 01913. Representative: Paul L. Twomey, Esq., 68 Park Street, Andover, MA 01810. *Passengers and their baggage in charter and special operations and delayed, misrouted or misdirected baggage*, between points in Hillsborough County and Rockingham County, NH, on the one hand, and, on the other, Logan International Airport, Boston, MA. Supporting shipper(s): Great Adventures Travel, Inc., 528 So. Broadway, Salem, NH 03079; A–Top Polymers, Inc., #47 Route 28, Windham, NH 03087; Salem Motor Inn, Keewaydin Drive, Salem, NH 03079; Prestige Travel, Inc., 540 So. Broadway, Salem, NH 03079.

MC 166867 (Sub-1–2TA), filed August 9, 1983. Applicant: L'EXPRESS DU MIDI, INC., 1076 Union Street, P.O. Box 99, St.

Cathering, Quebec, CD JOLIEO. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *Contract carrier:* irregular routes: *Building materials* between points of entry on the International Boundary Line between U.S. and CD in NY, VT, NH and ME, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, VT, and WI, under continuing contract(s) with Westroc Industries Limited of Mississaugua, Ontario, CD. Supporting shipper: Westroc Industries Limited of Mississaugua, Ontario, CD.

MC 169074 (Sub-1–1TA), filed August 9, 1983. Applicant: N. B. N. TRANSPORTATION SERVICES CO., 340 South Stiles Street, Linden, NJ 07036. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666. *General commodities, except Classes A and B explosives, household goods, and commodities in bulk,* between New York, NY, Boston, MA, Philadelphia, PA, Baltimore, MD, Newport News and Norfolk, VA, restricted to traffic having a prior or subsequent movement by water. Supporting shipper(s): Container Overseas Agency, Inc., 340 South Stiles St., Linden, NJ 07036; South African Marine Corp., #1 Bankers Trust Plaza, New York, NY 10006; "K" Line, Two World Trade Center, 99th Floor, New York, NY 10048; Hapag-Lloyd Agencies, One Edgewater Plaza, Staten Island, NY 10305.

MC 151193 (Sub-1–46TA), filed August 8, 1983. Applicant: PAULS TRUCKING CORP., 286 Homestead Avenue, Avénel, NJ 07001. Representative: Michael A. Beam (same as applicant). *Contract carrier:* irregular routes: *Drugs, medicines, toilet preparations, pet products and materials, equipment and supplies used in the manufacture, sale, and distribution of such commodities,* between points in AL, AR, CA, GA, IL, KS, MA, MI, MN, NJ, TN and TX, under continuing contract(s) with Carter-Wallace, Inc., Cranbury, NJ. Supporting shipper: Carter-Wallace, Inc., Half Acre Road, Cranbury, NJ 08512.

MC 169790 (Sub-1–1TA), filed August 8, 1983. Applicant: SILVER STREAK TRUCKING, INC., R. D. No. 3, Box 358, Geneva, NY 14456. Representative: James H. Sweeney, P. O. Box 9023, Lester, PA 19113. *Electrical machinery or equipment; materials, equipment and supplies used in the manufacture and distribution of electrical machinery or equipment* between points in Ontario County, NY on the one hand, and, on the other, points in AZ, CA, CT, FL, GA, IL, MA, MI, MN, MO, NH, NJ, NY, NC, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, and WI. Supporting shipper: Elston Electronics Corp., 35 Lehigh Street, Geneva, NY 14456.

MC 169725 (Sub-1–1TA), filed August 8, 1983. Applicant: SURE FIRE BULK CARRIERS CORP., 203 Inman Avenue, Avenel, NJ 07001. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Asphalt and asphalt products,* between New York, NY Commercial Zone, on the one hand, and, on the other, points in CT, DE, MD, MA, NJ, NY, PA and RI. Supporting shipper(s): Asphalt Associates Newark Turnpike, Kearney, NY 07032; Castle Coal and Oil Co., Inc., 1724 Eastchester Road, Bronx, NY 10461.

MC 142045 (Sub-1–1TA), filed August 10, 1983. Applicant: TRANSPORT McNEIL-McGRATH, INC., 2525 St. Claire Avenue West, Toronto, Ontario, CD M6N 4Z5. Representative: John L. Trigilio, Esq., R. D. Gunderman & Associates, P.C., Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *General commodities (except Classes A and B explosives, Household goods as defined by the Commission, and commodities in bulk),* between ports of entry on the International Boundary line between the US and CD on the St. Lawrence River in NY, on the one hand, and, on the other, points in Clinton, Franklin, Jefferson, Oneida, Onondaga, and St. Lawrence Counties, NY. Supporting shipper(s): There are 14 statements attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

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 161128 (Sub-II–1TA), filed August 8, 1983. Applicant: BEREA MOVING & STORAGE CO., 15145 Lorain Rd., Cleveland, OH 44111. Representative: Ardella F. Melton, 13826 Janell Dr., Columbia Station, OH 44028. General Commodities, between points in OH, on the one hand, and, on the other, points in TX, LA, AR, MO, IL, WI, MI, IN, KY, TN, TX, PA, WV, VA, NJ, MD, DE, NC, SC, GA, FL, MS, AL, MN, NY, and MA for 270 days. Supporting shippers: Sperry Corp. Electronics Division, 3807 West 150th St., Cleveland, OH 44111. Eastman Kodak, Distribution Center, 4545 West 160th St., Cleveland, OH 44135. Curtis 1000, Inc., 15900 Industrial Pkwy., Cleveland, OH 44135.

MC 169668 (Sub-II–1TA), filed August 5, 1983. Applicant: FLOYD E. BAKER TRUCKING, INC., Route 1, Box 157, Mt. Jackson, VA 22842. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740. *Food products,* between Mt. Jackson, VA and Winchester, VA on the one hand, and, on the other, points in and east of TX, OK, KS, IA and MN. An underlying ETA seeks 120 days authority. Supporting shippers: Bowman Apple Products Corp., P.O. Box 817, Mt. Jackson, VA 22842. Shenandoah Apple Co-Operative Inc., P.O. Box 435, Winchester, VA 22601.

MC 158956 (Sub-II–3TA), filed August 1, 1983. Applicant: JOSEPH CALLAVINI, P.O. Box 256, Lattimer, PA 18234. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517. *General commodities* (except household goods, classes A & B explosives and bulk commodities), between Lackawanna and Luzerne Counties, PA, on the one hand, and, on the other, NM, AZ, OR, WA, and CA. Supporting shipper: Penn-Vine Warehouse, Hazleton Heights, Hazleton, PA.

MC 164587 (Sub-II–1TA), filed August 1, 1983. Applicant: CIRCLE W TRANSPORTATION, INC., 290 Leger Rd., North Huntingdon, PA 15642. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. *Steel castings* from Jefferson City, MO to Dayton and Vandalia, OH, under continuing contract(s) with BenchMark Tool Company and ShopSmith, Inc. of Jefferson City, Mo. Supporting shipper: BenchMark Tool Company, ShopSmith, Inc., 1723 Industrial Dr., Jefferson City, MO 65101.

MC 169223, (Sub-II–1TA), filed August 1, 1983. Applicant: RMG ENTERPRISES LTD, d.b.a. COMMONWEALTH CARRIER, 206 Mine Road, P.O. Box 7104, Fredericksburg, VA 22401. Representative: Mark D. Russell, Suite 348 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004–1879. Contract, irregular: *Paper and printed matter;* From Jessup, Snow Hill, and Thurmont, MD, and Fredericksburg, VA; To points in DC, MD, and VA, under continuing contract(s) with Moore Business Forms, Inc. Supporting shipper: Moore Business Forms, Inc., P.O. Box 787, Fredericksburg, VA 22401.

MC 163622 (Sub-II–3TA), filed August 4, 1983. Applicant: GERALD N. CREASY, d.b.a. CREASY TRANSPORT, 911 Euclid Ave., Lynchburg, VA 24501. Representative: Gerald N. Creasy (same address as applicant). Contract, irregular: *Paper and related paper products* between Lynchburg, VA, on the one hand, and, on the other, points in AL, AR, DE, FL, GA, IL, IN, KY, LA, MD, MI, MO, MS, NC, NJ, NY, OH, OK, PA, SC, TN, TX, VA and WV. Under continuing contract(s) with Mead Paperboard Products. An underlying ETA seeks 120 days authority.

Supporting shipper(s): Mead Paperboard Products, P.O.B. 980, Lynchburg, VA 24505.

MC 168782 (Sub-II-1TA), filed August 4, 1983. Applicant: ERIE AIRPORT LIMOUSINE SERVICE, INC., Erie Hilton Hotel, 16 W. 10th St., P.O. Box 4073, Erie, PA 16512. Representative: Glendon E. Rice, Sr. (same address as applicant). *Passengers and their baggage and misplaced, misrouted and delayed baggage*, between Erie County, PA, on the one hand, and, on the other, Cleveland Hopkins Airport, Cleveland, OH; and Greater Buffalo Airport, Buffalo, NY. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are six supporting statements attached to this application which may be examined at the Phila. Regional office.

MC 169612 (Sub-II-1TA), filed August 2, 1983. Applicant: GREGORY TRANSPORT, INC., 1723 Cleveland Ave., SW., Canton, OH 44706. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. *Common:* Metals and metal products, except commodities in bulk, between Canton, OH, on the one hand, and, on the other, PA, NY, MI, IN, WV, KY, and MD, for 270 days. Supporting shipper: Gregory Galvanizing and Metal Processing, Inc., 1723 Cleveland Ave., SW., Canton, OH 44706

MC 107403 (Sub-II-47TA), filed August 5, 1983. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Contract, irregular: *General commodities (except Classes A & B explosives, Household goods)* between all points in the U.S., under continuing contract(s) with GAF Corporation. An underlying ETA seeks 120 days authority. Supporting shipper(s): GAF Corporation, 1361 Alps Rd., Wayne, NJ 07470.

MC 135364 (Sub-II-22TA), filed August 1, 1983. Applicant: MORWALL TRUCKING, INC., R.D. #3, Box 76-C, Moscow, PA 18444. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517. Contract, Irregular: *Synthetic fibres and related products*, between Bristol County, MA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, KS, OK and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Progressive Polymer Co., Cove St., New Bedford, MA 02744.

MC 65580 (Sub-II-2TA), filed August 2, 1983. Applicant: MUSHROOM TRANSPORTATION CO., INC., 845 E. Hunting Park Ave., Phila., PA 19124. Representative: Michael C. Arnold (same address as applicant). Contract, irregular: *General commodities (except Classes A and B explosives and household goods)* between points in DE, DC, MA, MD, NJ, NY, OH, PA, VA and WV, on the one hand, and, on the other, points in CT and RI, under continuing contract(s) with Union Carbide Corp. An underlying ETA seeks 120 days authority. Supporting shipper(s): Union Carbide Corp., Old Ridgebury Rd. A-1, Danbury, CT 06817.

MC 107012 (Sub-II-335TA), filed July 27, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Ft. 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 U.S. under continuing contract(s) with Xonics, Inc. of Des Plaines, IL for 270 days. Supporting shipper: Xonics Medical Systems, 515 E. Touhy, Des Plaines, IL 60018.

MC 107012 (Sub-II-336TA), filed August 8, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Ft. Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract, irregular: *Household goods* between points in the US (excluding AK & HI) under continuing contract(s) with The Stroh Brewery Co. of Detroit, MI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Stroh Brewery Co., One Stroh Dr., Detroit, MI 48226.

MC 107012 (Sub-II-337TA), filed August 8, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Ft. Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract, irregular: *Household goods* between points in the US (excluding AK & HI) under continuing contract(s) with Archer Daniels Midland Co., of Decatur, IL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525.

MC 2202 (Sub-II-38TA), filed August 3, 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 amd B explosives, and commodities in bulk) between points in the U.S., except AK and HI, under continuing contract(s) with Wal-Mart Stores, Inc., Bentonville, AR 72712 for 270 days. Supporting shipper(s): Wal-Mart Stores, Inc., 702 S.W. 8th St., P.O. Box 116, Bentonville, AR 72712.

MC 155322 (Sub-II-3TA), filed August 8, 1983. Applicant: HANDY ROYALTY, d.b.a. ROYALTY TRUCKING, 2311 Starling Rd., Bethel, OH 45106. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. Common: *General commodities* (except commodities in bulk, Classes A and B explosives, and household goods), between Clermont and Hamilton Counties, OH, on the one hand, and, on the other, points in the U.S., except AK and HI, for 270 days. Supporting shippers: Industrial Air, Inc., Box 215, Bach-Buxton Rd., Amelia, OH 45102. Mutual Manufacturing Co., 3300 Spring Grove Ave., Cincinnati, OH 45225.

MC 169656 (Sub-II-1TA), filed August 4, 1983. Applicant: SUMMITT TRUCKING COMPANY, 9640 Timberlake Rd., Lynchburg, VA 24502. Representative: J. Johnson Eller, Jr., 712 Main St., Altavista, VA 24517. *Furniture and fixtures* between points in CA, AZ, NV, VA and NC, on the one hand, and, on the other, points in the U.S. Supporting shipper(s): Hooker Furniture Corp., Martinsville, VA 24112; John Breuner Co., 3201 Fostoria Way, San Ramon, CA 94583.

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 169731 (Sub-3-2TA), filed August 9, 1983. Applicant: MIDDLE-TENN FREIGHT, INC., 1113 Depot Street, Shelbyville, TN 37160. Representative: Roland M. Lowell, 5th Floor, 501 Union Street, Nashville, TN 37219. *Scrap paper*, between Tullahoma, TN and its commercial zone, on the one hand, and, on the other, AL, IL, IN, MI, OH and WI. Supporting shippers: Pulp & Paper Exchange, Inc., 695 Bryden Road, Columbus, OH; Fibers, Inc., 340 S. Lombard Rd., Addison, IL; Royal Paper Stock Co., Inc., 914 Williams Ave., Columbus, OH; International Cellulose, Inc., Box 1110, Atlanta, GA.

MC 169731 (Sub-3-1TA), filed August 9, 1983. Applicant: MIDDLE-TENN FREIGHT, INC., 1113 Depot Street, Shelbyville, TN 37160. Representative: Roland M. Lowell, 5th Floor, 501 Union Street, Nashville, TN 37219. *Sporting goods and supplies*, between Tullahoma, TN and its commercial zone, on the one hand, and, on the other, Jacksonville, and Miami, Fl and their commercial

zones. Supporting shipper: Lannom Manufacturing Company, Inc., Highway 41A, Box 550, Tullahoma, TN.

MC 169724 (Sub-3–1TA), filed August 9, 1983. Applicant: SOUTHERN EXPRESS, a Division of Energy Marketing Corporation, 2000 Lindell Avenue, Nashville, TN 37204. Representative: D. R. Beeler, P.O Box 482, Franklin, TN 37064. *Lumber and wood products* from points in MS, AL, GA, OR, CA, WA, ID, LA, SC, NC, AR, VA, TN, and KY to points on and east of the Mississippi River. There are 5 support statements attached to this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 682 (Sub-3–12TA), filed August 8, 1983. Applicant: BURNHAM SERVICE COMPANY, INC., 5000 Burnham Boulevard, Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Avenue, NW., Suite 1112, Washington, DC 20036–5391. *Contract,* irregular *household goods,* between points in the U.S. under continuing contract(s) with Martin Marietta, of Bethesda, MD. Supporting shipper: Martin Marietta, 6801 Rockledge Drive, Bethesda, MD 20817.

MC 157802 (Sub-3–4TA), filed August 8, 1983. Applicant: CONTRACT TRANSPORT, INC., Suite 203, 1750 Old Springhouse Lane, Atlanta, GA 30338. Representative: Frank D. Hall, Suite 202, 1750 Old Springhouse Lane, Atlanta, GA 30338. *General commodities, except Classes A and B explosives, household goods and commodities in bulk,* between Wilmington, NC, Savannah, GA, Charleston, SC, Jacksonville, FL, and Mobile, AL, on the one hand, and, on the other, points in the U.S., (except AK and HI,) restricted to traffic having a prior, subsequent or intermediate movement by rail or water. Supporting shipper(s): There are 12 statements in support of this application which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 169265 (Sub-3–1TA), filed July 18, 1983. Republication—Originally Published in **Federal Register** of 08–3–83 Page 35198, Volume 48, No. 150. Applicant: JIM DOWNEY CORPORATION, 4888 Allen Circle, Acworth, GA 30103. Representative: Macklyn A. Smith Sr., 1385 Iris Dr., Conyers, GA 30208. *Contract* carrier: irregular: *General commodities* throughout the continental U.S. Supporting shipper: United Trucker's Services, Inc., 1385 Iris Dr., Conyers, GA 30208.

MC 2934 (Sub-3–94TA), filed August 9, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as applicant). *Contract:* Irregular; *Household goods,* between points in the U.S. (excluding AK and HI), under continuing contracts with Zale Corporation, P. O. Box 222219, Dallas, TX 75222. Supporting Shipper: Zale Corporation, P. O. Box 222219, Dallas, TX 75222.

MC 169829 (Sub-3–1TA), filed August 12, 1983. Applicant: JUDITH BAILIFF SMITH, 724 Creek Ridge Road, 198, Greensboro, NC 27407. Representative: Terrell Price, 800 Briar Creek Rd., Ste. DD–504, Charlotte, NC 28205. *Plastic Pipe* from Macon, GA to points in MS, TX, LA, AL, FL, SC, NC, and TN. Supporting Shipper: Dyka, U.S.A., 7614 Industrial Highway, Macon, Georgia 31298.

MC 169284 (Sub 3–1TA), filed; August 11, 1983. Applicant: DANUBE CARPET MILLS, INC. 212 First Street, Box 2298, Fort Oglethorpe, GA 30742. Representative: M. C. Ellis, c/o Chattanooga Freight Bureau, Inc., 1001 Market Street, Chattanooga, TN 37402. *Contract carrier,* irregular, *general commodities (except classes A and B explosives, household goods and commodities in bulk)* from points in Elkhart and St. Joseph Counties, IN to points in AL, FL and GA under continuing contract(s) with United Freight Dispatch, Inc., of Elkhart, IN. Supporting shipper: United Freight Dispatch, Inc., 2220–1 Toledo Road, Elkhart, IN 46516.

MC 151375 (Sub-3–5TA), filed August 11, 1983. Applicant: COMPUTER TRANSPORT OF GEORGIA, INC., 6105 Purdue Dr. S.W. Atlanta, GA 30336. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. *Contract* irregular; *business and office machines and electronic manufacturing systems and parts thereof,* Between Cleveland, OH on the one hand, and, on the other, points in (1) OH, restricted to traffic having a prior of subsequent movement in interstate commerce, and (2) PA, under continuing contract(s) with International Business Machines Corp. Supporting shipper: International Business Machines Corp., P.O. Box 10, Princeton, NJ 08540.

MC 682 (Sub-3–13TA) filed August 12, 1983. Applicant: BURNHAM SERVICE COMPANY, INC., 5000 Burnham Boulevard, Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Avenue, N.W., Suite 1112, Washington, DC 20036–5391. *Contract,* irregular *household goods,* between points in the United States, under continuing contract(s) with Barclays American Corporation, of Charlotte, NC. Supporting shipper: Barclays American Corporation, 201 South Tryon Street, Charlotte, NC 28231.

MC 168643 (Sub-3–1TA), filed August 12, 1983. Applicant: WESLEY BOYD d.b.a., BOYD & SONS TRUCKING, 94 Richardson Road, Griffin, GA 30223. Representative: James M. Parrish, P.O. Box 1365, Marietta, GA 30061. *Contract carrier:* irregular routes: *Plastic bags and sheeting and materials, equipment and supplies used in the manufacture and distribution thereof,* between the plant site of Flex-On, Inc., Senoia, GA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Flex-On, Inc., 219 Andrews Parkway, Senoia, GA 30276.

MC 2934 (Sub-3–96TA) filed August 12, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as applicant). *Contract:* Irregular; *Household goods,* between points in the U.S. (excluding AK and HI), under continuing contracts with Cargill Incorporated, P.O. Box 9300, Minneapolis, MN 55440. Supporting shipper: Cargill Incorporated, P.O. Box 9300, Minneapolis, MN 55440.

MC 2934 (Sub-3–95TA) filed August 11, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry, (same as above). *Contract:* Irregular, *Household goods,* between points in the U.S. (including AK and HI), under continuing contracts with Dart & Kraft, Inc., 2211 Sanders Road, Northbrook, IL 60062. Supporting shipper: Dart & Kraft, Inc., 2211 Sanders Road, Northbrook, IL 60062.

Agatha L. Mergenovich,

Secretary.

[FR Doc 83–22922 Filed 8–19–83; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–59]

Rail Carriers; Passenger Train Operation

To: Union Pacific Railroad Company

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Burlington Northern Railroad Company (BN). A portion of the BN tracks at Orillia, Washington, are temporarily out of service because of a trestle fire. An alternate route is available via Union Pacific Railroad

Company between Argo and Reservation, Washington.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exist for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1981, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Union Pacific Railroad Company (UP) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Argo, Washington, and a connection with Burlington Northern Railroad Company (BN) at Reservation, Washington.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 7:30 p.m., August 5, 1983 (EDT).

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 8, 1983, (PDT), unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company, and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 5, 1983.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 83-22918 Filed 8-19-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Solicitation; Management of Long-Term Potentially Violent Offenders

In the face of the urgent crisis facing prison officials in dealing with an ever increasing number of long-term inmates, the National Institute of Justice announces a competition for a cooperative agreement to plan, design, implement and evaluate administrative and programmatic approaches aimed at the improved management of these long-term, potentially violent offenders.

As prison populations grow, this group within the prison is increasing more rapidly. Mostly convicted of violent offenses, this population is made up increasingly of more youthful offenders with a greater tendency to act out in assaultive ways.

The major problem areas to be addressed by this developmental effort include:

(1) The safe and appropriate housing of long-term and troublesome inmates in a cost effective manner; (2) the development of prison roles and occupations, consistent with security, that would enable long term inmates to be productively employed; (3) the development of incentives and rewards that will motivate positive behavior during the inmate's prolonged incarceration; and (4) the prevention of physical and mental deterioration of offenders serving longer terms.

This solicitation is particularly aimed at state correctional systems, which are encouraged to compete for this cooperative agreement. While applications are sought from state agencies, collaborative arrangements between a state agency and a research firm are not excluded.

Proposals of twenty-five pages or less must be postmarked no later than October 15, 1983 to be considered. A total of $350,000 has been allocated for this effort and it is anticipated that one award will be made, with the program to be conducted within a 24–30 month period.

Copies of the solicitation can be obtained by sending a self-addressed mailing label to: National Criminal Justice Reference Service, Attn: Improved Handling of Long Term Offenders, P.O. Box 6000, Rockville, Maryland 20850.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 83-22947 Filed 8-19-83; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 14–15, 1983, from 9:00 a.m.–5:30 p.m. in Room 714–715 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on September 14 from 9:00 a.m.–5:30 p.m. and on September 15 from 10:30 a.m.–5:30 p.m. to discuss Policy, Planning for the Future and Guidelines.

The remaining sessions of this meeting on September 15 from 9:00 a.m.–10:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-22901 Filed 8-19-83; 8:45 am]

BILLING CODE 7537-01-M

Local Arts Agencies Test Program Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Local Arts Agencies Test Program Panel to the National Council on the Arts will be

held on September 14–15, 1983, from 9:00 a.m.–5:30 p.m. and on September 16, 1983, from 9:00 a.m.–3:00 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on September 16, 1983, from 9:00 a.m.–3:00 p.m. to discuss Guidelines and Policy.

The remaining sessions of this meeting on September 14–15, from 9:00 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-22950 Filed 8-19-83; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Organizations Section) to the National Council on the Arts will be held on September 12–15, 1983, from 9:00 a.m.–5:30 p.m. and on September 16, 1983, from 9:00 a.m.–1:00 p.m. in Room M–07 East of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on September 15, 1983 from 2:00 p.m.–3:00 p.m. and on September 16, 1983 from 9:00 a.m.–1:00 p.m. to discuss Guidelines, Service Organizations and consultant reports.

The remaining sessions of this meeting on September 12–14, 1983 from 9:00–5:30 p.m. and on September 15, 1983 from 9:00 a.m.–2:00 p.m. and on September 15, 1983 from 3:00 p.m. 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-22952 Filed 8-19-83; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Theater Advisory Panel (Overview) to the National Council on the Arts will be held on September 13, 1983, from 9:00 a.m.–5:30 p.m. in Room 415 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be Guidelines and Multi-Year Plan.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-22953 Filed 8-19-83; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Artists Nominations Section) to the National Council on the Arts will be held on September 20, 1983, from 10:00 a.m.–5:00 p.m., at the U.S. Courthouse, 141 Church Street, New Haven, Connecticut.

This meeting is for the purpose of panel review, discussion, evaluation, and recommendation regarding the selection of artists to be commissioned to create works of art for Federal buildings under construction or renovation. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-22954 Filed 8-19-83; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62, issued to Carolina Power and Light Company (the licensee), for operation of the Brunswick Steam Electric Plant, Units 1 and 2 located in Brunswick County, North Carolina.

The amendments would modify the technical specifications as follows: (1) Delete requirements for seismic snubbers on those portions of the control rod drive return line piping that have been removed, (2) add requirements regarding the operability, response time and surveillance of instrumentation installed as a result of certain N.R.C. recommendations set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and (3) add requirements regarding the operability, response time and surveillance of instrumentation used for signalling a condition of high water level in the scram discharge piping. Technical Specifications that would be changed to implement the recommendations in NUREG–0737 are associated with the following items as listed in NUREG–0737:

IIB3 Postaccident sampling
IIF1 Accident monitoring
IIF1.1 Noble gas monitor
IIF1.2 Iodine/Particulate sampling

IIF1.3 Containment high range monitor
IIF1.5 Containment water level
IIF1.6 Containment hydrogen

These NUREG–0737 items, as well as the removal of control rod drive return line piping and the addition of scram discharge volume instrumentation, are improvements that have been previously approved by the N.R.C. The changes to the Technical Specifications will be necessary administrative followup actions essential to the implementation of these improvements.

These revisions to the Technical Specifications are in response to the licensee's application for amendments dated June 16, 1982, as supplemented April 28, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 CFR 14870). The examples involving no significant hazards consideration include, "(i) a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and, (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement."

The deletion of requirements for seismic snubbers on those portions of the control rod return line piping that have been removed is encompassed by example (i) above in that this would be an administrative change to achieve consistency between the Technical Specifications and the physical configuration of the nuclear power plant. The balance of the changes to the Technical Specifications called for by the amendment request are encompassed by example (ii) above since they would add limitations and restrictions not presently included in the Technical Specifications.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By September 21, 1983, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satifisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate in the conduct of the hearings, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30 day notice period, provided that its final determination is

that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing of a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 [in Missiouri (800) 342–6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 16th day of August, 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83–22987 Filed 8–19–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–387]

Pennsylvania Power & Light Co.; Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–14, issued to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (the licensees), for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerene County, Pennsylvania.

The amendment would provide relief from the requirements of Technical Specification 3.8.1.1 ACTION a. in order to reinstall the repaired T–10 Startup Transformer during reactor power operation. Specifically, relief is requested to extend the restoration of at least two offsite circuits to OPERABLE status from "within 72 hours" to "within 7 days." Additionally, elimination of the 1-hour breaker alignment surveillance per Surveillance Requirement 4.8.1.1.1.a and elimination of the 4-hour diesel generator start testing required by Technical Specification 3.8.1.1. ACTION a. are requested for the period of the transformer replacement since these requirements will be performed prior to entering the Limiting Condition for Operation specified in Technical Specification 3.8.1.1. Relief is also requested to extend the demonstration of diesel generator OPERABILITY by performance of Surveillance Requirement 4.8.1.1.2.a.4 from "at least once per 8 hours" to "at least once per 72 hours" as required by Technical Specification 3.8.1.1 ACTION a. Relief from the requirements of Technical Specification 3.8.1.1 ACTION a. is requested only for the period of the T–10 Startup Transformer replacement in accordance with the licensee's application for an amendment dated July 29, 1983, and supplemented by PP&L letter dated August 4, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee in his letter dated August 4, 1983, stated that extension of the restoration of at least two offsite circuits from 72 hours to 7 days, elimination of the 1-hour breaker alignment surveillance, and elimination of the 4-hour diesel generator start testing in testing in Technical Specification 3.8.1.1 ACTION a. involve no significant hazards consideration. The licensee's basis for this determination is that the change does not: (1) Involve a significant increase in the probability or consequences of an accident or (2) create the probability of a new or different kind of accident from any accident previously evaluated because no credit is taken for the offsite power sources in the LOCA analysis. If the remaining offsite power circuit was lost, vital loads would be picked up by the emergency diesel generators. The licensee also states the change does not involve a significant reduction in a margin of safety because breaker alignment and diesel generator testing will be performed prior to taking one offsite power source out of service, thus providing assurance that the remaining offsite power source and the diesel generators will function if needed when the offsite power source is taken out of service. If the staff's review confirms the licensee's evaluation, the amendment clearly involves no significant hazards consideration.

The staff proposes to determine that extension of the diesel generator surveillance required by Technical Specification 3.8.1.1 ACTION a. from 8 hours to 72 hours involves no significant hazards consideration. Extension of the interval from 8 hours to 72 hours does not significantly reduce the reliability of the diesel generators to perform their intended function for the period of transformer replacement. Therefore, operation of the facility during the period of transformer replacement with the proposed change clearly would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2)

create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn.: Docketing and Service Branch.

By September 21, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washigton, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 16th day of August 1983.

For the Nuclear Regulatory Commission.

Ralph Caruso,

Acting Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-22968 Filed 8-19-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power and Light Company, Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-14, issued to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (the licensees), for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania.

The amendment would revise License Condition 2.D to include Changes N, O, and P to the Physical Security Plan which consist of an increase of time between initial security clearances and an update, a reduction in Mobile Patrol Officers, the addition of a paragraph to the Plan which grants temporary relief of certain commitments during periods of construction and a new appendix describing vital areas and equipment locations and changes A and B to the Security Training and Qualification Plan to provide for consistency with changes to the Physical Security Plan in accordance with the licensee's application for an amendment dated June 27, 1983. Pursuant to 10 CFR 73.21 changes are withheld from public inspection.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration because the changes will not (1) involve a signficant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By September 21, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, Designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will

publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cuse for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.174(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 12th day of August 1983.

For the Nuclear Regulatory Commission.

R. Caruso,

Acting Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-22969 Filed 8-19-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on September 9, 1983, at the Hanford House Thunderbird, 802 George Washington Way, Richland, WA. The Subcommittee will continue its review of the basalt waste isolation project at the Hanford site and possibly review the DOE's site characterization plan for the proposed site if it is available by then.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only durng those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, September 9, 1983—8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discusions with representatives of the DOE and NRC Staffs, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Ms. R. C. Tang (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: August 17, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-22970 Filed 8-19-83; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY:

Proposal(s)

(1) Collection title: Evidence for Application of Overall Minimum
(2) Form(s) submitted: G-318, G-319, G-320
(3) Type of request: Revision of a currently approved collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 3,925
(7) Annual reporting hours: 1,550
(8) Collection description: Under Section 3(f)(3) of the Railroad Retirement Act the total monthly benefits payable to a railroad employee and his family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

(1) Collection title: Statement Regarding Contribution and Support
(2) Form(s) submitted: G-134
(3) Type of request: New collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 400
(7) Annual reporting hours: 117
(8) Collection description: Dependency on the employee for one-half support at the time of the employee's retirement or death can be a condition affecting eligibility for and/or amount of an annuity provided for under section 2 of the Railroad Retirement Act.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202-395-6880), Office of Management and Budget, Room 3201,

New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 83-22943 Filed 8-19-83; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Forms Under by OMB

Agency Clearance Officer—Kenneth Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension

Rule 204-2 [17 CFR 275.204-2]
SEC File No. 270-215

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of approval rule 204-2 under the Investment Advisers Act of 1940 which concerns the records required to be maintained and preserved by registered investment advisers.

The potential respondents include all investment advisers who make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser other than one specifically exempted from registration pursuant to Section 203(b) of the Investment Advisers Act.

Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 10, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-23023 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20087; File No. S7-988]

Consolidated Options Last Sale Reports and Quotation Information; Immediate Effectiveness of Amendments to Plan for Reporting

August 16, 1983.

On July 1, 1983, the self-regulatory organizations acting jointly as the Options Price Reporting Authority ("OPRA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to OPRA's Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the "Plan").[1]

I. Description of the Amendment

The amendment sets out standards and procedures governing OPRA's dissemination of information, besides last sale reports and current quotations, which the parties to OPRA may wish to disseminate; and it provides that each party indemnify OPRA for any loss, liability or other expense which may arise or be threatened as a result of any last sale, quotation or other information reported by that party to OPRA and disseminated as reported.

The dissemination standards set forth in the amendment are meant to eliminate the need for case-by-case consideration and approval of OPRA party requests to disseminate information other than quotations and last sale reports. The standards require that thirty days notice be given to OPRA describing the additional information to be disseminated, that the information relate to the party's market in eligible securities and that the party bear any additional expense occasioned by the dissemination. The dissemination will not be permitted if it interferes with last sale and quotation dissemination.

The amendment's indemnification provisions, which extend to OPRA, its directors, officers, employees, agents and the other OPRA parties, are intended to protect OPRA from claims that may be made in respect of OPRA's operations. It includes provisions for notice to indemnifying parties and for opportunity for such parties to conduct the defense of actions against indemnified parties.

II. Request for Comment

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing, as finally amended, and require refiling and approval of the amendment by Commission order, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Accordingly, in order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their views to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, within 21 days from the date of publication of this notice in the **Federal Register**. All communications should refer to File No. S7-988.

Copies of the amendment, all subsequent amendments, all written statements with respect to the amendment which are filed with the Commission, and all written communications relating to the amendment 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 public inspection in the Commission's Public Reference Room.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[2]

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-23017 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20088; File No. 4-256]

Institutional Networks Corp.; Order Instituting Proceeding and Granting Temporary Stay; NASD Decision

On July 15, 1983, the Institutional Networks Corporation ("Instinet") filed a petition ("Petition") with the Commission pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934 ("Act") seeking review of what it believes is a decision by the National Association of Securities Dealers, Inc. ("NASD")[1] denying or limiting its access to certain services provided by the NASD. In addition, Instinet requests interim relief pending final Commission action on its Petition. As discussed further in this release, the Commission has granted Instinet conditional interim relief and requests that interested persons submit comments addressing issues raised in the underlying proceeding.

I. Background

Over-the-counter ("OTC") securities designated as National Market System

[1] Corrections to the amendment were submitted on behalf of OPRA, August 1, 1983, and August 4, 1983. See File No. S7-988.

[2] 17 CFR 200.30-3(a)(27).

[1] Securities information services technically are offered by the NASD through two wholly-owned subsidiaries, NASDAQ, Inc. and Market Services, Inc. For ease of discussion, the NASD and its subsidiaries will be viewed collectively as the "NASD."

("NMS") Securities,[2] pursuant to Rule 11Aa2-1 ("NMS Securities Rule") under the Act,[3] are "reported securities" and subject to, among other things, the quotation reporting and dissemination requirements of Rule 11Ac1-1 ("Quote Rule") under the Act.[4]

Prior to the effectiveness of the first NMS designations, the NASD had applied to the Commission for an exemption from paragraph (b)(1) of the Quote Rule which requires the NASD to make available to vendors of securities information the bid, ask, and quotation size of each market maker in an NMS Security ("NMS Service").[5] In its exemption request, the NASD stated that such information was equivalent to the quotation montage contained in NASDAQ Level 2 and Level 3 services [6] and had been offered to vendors in the past.[7] The NASD continued that while no vendor had requested access to this information, the NASD would renew its offer to make the data available. The NASD then requested an exemption from paragraph (b)(1) of the Quote Rule with respect to NMS Securities until such time as a vendor had requested this data, a suitable agreement with the vendor was negotiated, appropriate charges were established and the NASDAQ system was modified accordingly.

In response to the Commission's solicitation of comment on the NASD's exemption request, Instinet, a registered broker-dealer which operates both information services and a computerized stock execution system, stated that it had indicated to the NASD an interest in the NMS Service, and had entered into negotiations with the NASD regarding the price and terms of access to that Service. Accordingly, in order to provide the NASD, Instinet and other interested vendors with an opportunity to satisfy the necessary conditions relating to vendor access to the NMS Service, the Commission granted the NASD an exemption from having to furnish the Service until October 1, 1982, or until such time as a suitable agreement with Instinet or any other interested vendor was negotiated, appropriate charges were established and the NASDAQ system was modified to permit distribution of the information to vendors.[8] Thereafter, extensive negotiations between the NASD and Instinet resulted in limited progress toward the parties reaching agreement on the fees to be assessed for receipt of this information by Instinet. Although the Commission noted its serious concern regarding the protracted negotiations and that it would monitor closely the parties' further negotiations; the Commission granted the NASD an extension of its Quote Rule exemption until March 1, 1983,[9] and again until June 30, 1983.[10]

To date, the NASD and Instinet have not entered into any contractual arrangments. The NASD, however, has implemented the requisite technical modifications so that Instinet could be furnished the information once an agreement is reached. Having reached an impasse in negotiations, the NASD, on June 2, 1983, filed a proposed rule change [11] with the Commission which, in most part, reflected the terms of the NASD's last offer in the negotiations with Instinet.[12] In response to the NASD's rule filing, Instinet filed (1) a comment letter opposing approval of the NASD's rule filing, [13] and (2) a petition with the Commission alleging that the NASD's proposed rule change in effect would constitute an inappropriate prohibition or limitation on access to facilities and services.[14]

II. Description of Petition

In filing its Petition with the Commission, Instinet has invoked the provisions of Section 11A(b)(5)(A) of the Act which provide aggrieved persons an opportunity for Commission review of a denial of, or limitation on, access to services offered by a registered securities information processor such as NASDAQ. Instinet claims that the NASD's proposed fees are such a limitation. Instinet's Petition begins by reviewing the present services (and fees associated with those services) offered by the NASD and Instinet. Instinet then lists a number of broad policy reasons which it believes support its basic claim for the requested information. First, Instinet notes the express language contained in the Securities Acts Amendments of 1975 ("'1975 Amendments") and the legislative history underlying those amendments[15] which favor the widespread availability of information as to quotations and transactions in securities. Second, Instinet states that "[k]nowledge of how many market makers are quoting, their range of prices and sizes, the age of their markets, and the movements of their markets in response to trading is essential to assess the true depth and liquidity of the market." In this respect, Instinet believes that because the relatively widely-disseminated NASDAQ Level 1 service only contains limited information, most OTC investors lack access to the critical market information that is, or could be,

[2] As of August 9, 1983, 422 of the most actively-traded OTC securities have been designated as NMS Securities.

[3] 17 CFR 240.11Aa2-1. For further information concerning the NMS Securities Rule, see Securities Exchange Act Release No. 17540 (February 17, 1981), 46 FR 13992; and Securities Exchange Act Release No. 19797 (May 20, 1983), 48 FR 24823.

[4] 17 CFR 240.11Ac1-1. NMS Securities also are subject to the Commission's Vendor Display Rule, Rule 11Ac1-2 (17 CFR 240.11Ac1-2) and Transaction Reporting Rule, Rule 11Aa3-1 (17 CFR 240.11Aa3-1). *See* paragraph (a)(6) of the Quote Rule.

[5] *See* Securities Exchange Act Release No. 18396 (January 7, 1983), 47 FR 2225.

[6] NASDAQ Level 2 service provides the full NASDAQ quotation data stream to subscribers. Level 2 includes every quotation with size and identifiers of the market makers disseminating quotations in each NASDAQ security (Level 3 service is essentially the same as Level 2 service but permits market makers to input quotations). NASDAQ Level 1 service only provides the best bid and ask quotations in each NASDAQ security and does not identify individual market makers.

[7] While only vendors other than the NASD provide Terminal Service (*i.e.*, the inquiry unit, formated data and communications linkage) for NASDAQ Level 1 service, at present, only the NASD provides Terminal Service for NASDAQ Level 2 and Level 3 services.

[8] *See* Securities Exchange Act Release No. 18585 (March 23, 1982), 47 FR 13265.

[9] *See* Securities Exchange Act Release No. 19118 (October 12, 1982), 47 FR 46793.

[10] *See* Securities Exchange Act Release No. 19564 (March 3, 1983), 48 FR 10175. The Commission granted the most recent extension, however, for the sole purpose of allowing the NASD to complete its technical perparations for making the information available. In this regard, the Commission stated that, in light of the previous entensions, it could not forsee any circumstances that would justify a further extension of the exemption. The final exemption lapsed on June 30, 1983, and the NASD has not requested an extension of the exemption.

[11] The proposed rule change amends Schedule D of the NASD's By-Laws to provide fees to vendors and subscribers of NASDAQ/NMS Market Maker Information. The rate for subscribers will be dependent upon the percentage NASDAQ/NMS trading volume bears to total NASDAQ volume. Specifically, the subscriber fee is based both on dollar volume and share volume—$75 multiplied by the percentage NMS Security share volume bears to NASDAQ share volume, plus $75 multiplied by the same percentage with respect to dollar volume. Both percentages are rounded up to the nearest 25%. Vendors will pay a total facilities charge not to exceed $3,200 per month. This fee will be decreased by the amount which new subscribers (*i.e.*, Instinet subscribers who were not previously NASDAQ subscribers) pay the NASD.

[12] *See* File No. SR-NASD-83-13 and Securities Exchange Act Release No. 19884 (June 17, 1983), 48 FR 29088.

[13] *See* Letter to George A. Fitzsimmons, Secretary, SEC from Jerome M. Pustilnik, Chairman, Instinet dated July 14, 1983.

[14] *See* Section 11A(b)(5) of the Act. Although Instinet alternatively seeks review pursuant to Section 19(d) of the Act, the Commission has determined that because the NASD is best viewed in the instant proceeding as acting in the capacity of a registered securities information processor, rather than a self-regulatory organization, the Commission will follow the procedures set forth in Section 11A(b)(5).

[15] *See* Senate Comm. on Banking, Housing & Urb. Affs., Report to Accompany S. 249: *Securities Acts Amendments of 1975*, S. Rep. No. 94-75, 94th Cong. 1st Sess. 7 (Com. Print 1975), reprinted in [1975] U.S. Code Cong. & Ad. News 179, 185.

contained in any service representing the full quotation data stream for NASDAQ securities. Third, Instinet believes that disincentives resulting from pricing securities information too high discourage vendor innovation in the area of developing enhanced and novel services based on the information.[16] Finally, Instinet believes that inexpensive and timely access to quotation information in OTC stocks will attract new investors to the OTC market.

Addressing issues bearing on the terms of access to the information, Instinet asserts that the NASD can charge Instinet only its marginal costs, the basis of which cannot include any return on investment or any costs associated with Level 3 service, the dissemination of Level 2 information or such costs as marketing and advertising. Instinet also argues that, in light of the NASD's position as both the sole processor of the NASDAQ quotation and transaction data and a horizontal competitor of Instinet, any subscriber fee would impose significant burdens on competitors which Instinet believes are inconsistent with the Act. In effect, Instinet argues that the NASD can charge only those costs directly attributable to providing Instinet the data feed. Instinet further contends that the NASD has failed to meet this standard because the fees are not cost-based but instead set at a level sufficient to ensure no loss of revenue from the NASD's present quotation display services. As to relief, Instinet requests that the Commission cease extending the NASD's Quote Rule exemption and require the NASD to provide to all requesting vendors information on all OTC securities on "fair and reasonable terms." [17]

III. Commission Authority and Institution of Proceeding Pursuant to Section 11A(b)(5)

Section 11A(b)(5)(A) of the Act provides the Commission with authority on its own motion, or upon application by an aggrieved person, to review any prohibition or limitation on access to services provided by a registered securities information processor. As a preliminary matter, the Commission believes that the NASD's proposed fees may represent a limitation on Instinet's access to an NASD service. Specifically, the Commission recognizes that negotiations between Instinet and the NASD concerning charges for access to the NMS Service have reached an impasse and that there presently is little or no likelihood that the parties will resolve their difference on such critical matters as the level of, and formula used, to calculate the charges, the appropriateness of the NASD collecting subscriber charges from Instinet's customers, and whether, if a direct subscriber fee is permissible, such fee must include multiple terminal discounts.

In this regard, the Commission previously has concluded that the level of charges, or the terms at which facilities and services are offered by a registered securities information processor, can constitute a prohibition or limitation on access to those facilities and services.[18] The Commission, therefore, is instituting a proceeding to determine whether the NASD's proposed charges for the NMS Service would constitute a prohibition or limitation on access to services inconsistent with the provisions of the Act.

With respect to the Commission's review of this limitation on access, Section 11A(b)(5)(B) of the Act provides that if the Commission finds, after notice and opportunity for hearing, that a prohibition or limitation on access to the services of a registered securities information processor is consistent with the provisions of the Act and the rules and regulations thereunder and that the person alleging the prohibition or limitation has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding.[19]

Pursuant to Section 11A(b)(5)(A), the Commission may summarily, or after notice and opportunity for hearing, stay a prohibition or limitation with respect to access to services offered by a registered securities information processor.

Section 11A(b)(5) this provides the Commission with the substantive power to review prohibitions or limitations on access by registered securities information processors and the power to stay the effectiveness of alleged prohibitions or limitations upon access until such time as the Commission may conduct its substantive review in an orderly manner.

IV. Solicitation of Comments

In order to enable the Commission to evaluate the NASD's proposed rule change in regard to the issues raised in Instinet's Petition, the Commission requests the NASD, Instinet and any interested persons to submit comments addressing, in addition to any general matters concerning the rule change [20] or Petition, the following questions:

1. With respect to the NASD's proposed $3,200 a month vendor fee to be paid by Instinet:

a. What costs may the NASD recover in this vendor fee—only the marginal costs discussed by Instinet in its Petition, or some other costs? If fully-distributed costs, on what costs that it incurs in operating it Level 2 and 3 services should the NASD base its fee?

b. Is this fee reasonably related to the NASD's cost of providing the NMS Service to vendors?

2. With respect to the NASD's proposed fee to be paid by subscribers:

a. Is it permissible under the Act for an exclusive processor to base it fees on the number of subscribers of a particular vendor? Furthermore, is it permissible under the Act for an exclusive processor to charge subscribers a fee directly or may it only charge the vendors a fee and have the vendors determine how to assess the ultimate costs on its subscribers?

b. If subscriber fees as a general matter are viewed as permissible, are there additional considerations in the present proceeding where the exclusive processor also is a vendor in potential competition with the petitioner? [21]

c. If subscriber fees are viewed as permissible in this instance, what costs should the NASD be able to recover through such fees? [22]

---

[16] For a discussion of Instinet's proposed enhancements in displaying the sought after information, see text accompanying notes 41 and 42, *infra*.

[17] *See* text accompanying notes 33 to 34, *infra*.

[18] *See* Securities Exchange Act Release No. 14784 (May 19, 1978), 14 SEC Dkt. 1158. In that instance, two vendors petitioned the Commission under Section 11A(b)(5) to determine whether the Options Price Reporting Authority's ("OPRA") imposition of access fees on vendors receiving options last sale reports could constitute an inappropriate limitation on access to services. The Commission concluded that the imposition of an access fee could be a limitation on access to services.

[19] Section 11A(b)(5)(B) also provides that "[i]f the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this title, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor."

[20] In this regard, commentators specifically are urged to review and address the questions raised by the Commission in its initial publication of the proposed rule change. *See* note 12, *supra*.

[21] Other exclusive processors, such as OPRA and the Consolidated Transaction Association ("CTA") charge subscribers fees, but those organizations do not offer Terminal Services in competition with other vendors.

[22] In considering this question commentators may wish to focus on the NASD's decision to base its proposed subscriber charges off fees it currently charges for Level 2 and Level 3 services (services which potentially are in direct competition with Instinet's proposed service). Commentators also may wish to address whether basing the subscriber fees on Level 3 service which also permits OTC

d. Are the NASD's proposed subscriber fees reasonably related to its cost in providing the NMS Service to subscribers?

e. Is the per terminal cost of providing NMS Securities quotation data to a multiple terminal subscriber less than a single terminal subscriber? If so, are multiple terminal discounts required by the Act's statutory goals such as the goal to ensure fair competition among broker-dealers?

3. Would the NASD's proposed fee structure allow for access to information on NMS Securities in a non-discriminatory manner, at a cost which would not impose an unnecessary or inappropriate burden on competition?

4. Is the NASD entitled to a rate of return in either the subscriber or vendor fees in providing the NMS Service to Instinet? If so, at what level?

5. Should the NASD be required to provide quotation information on all NASDAQ Securities as a part of this proceeding? If not, should the Commission institute a rulemaking proceeding to so require?

Because useful commentary on these questions first would require a response by the NASD on the cost of providing this Service, the Commission has requested separately that the NASD submit comments regarding its costs in providing NMS Securities quotation data by September 15, 1983. The NASD's response shall be placed in the public file at that time. Further NASD comments, and comments by others, are requested by October 15, 1983.

V. Grant of Interim Relief to Instinet

1. Request by Instinet and Solicitation of Comments

In its Denial of Access petition, instinet also requested the Commission to provide interim relief pursuant to the authority vested in the Commission under Rule 11A(b)(5)(A),[23] by ordering the NASD to provide Instinet with quotations in all NASDAQ stocks temporarily without charge. In addition, Instinet averred that the charges ultimately established could be applied retroactively, and that Instinet would place $150,000 in an escrow account for the eventual payment of these accrued charges. Prior to Commission consideration of that request, both Instinet and the NASD were afforded an opportunity to submit additional written data, views and arguments relating to the issue of interim relief.[24]

Both parties responded.[25] Instinet's Memo reiterates its position, taken in its Petition, that Instinet requests that the Commission summarily order the NASD to provide the full NASDAQ quotation data stream to Instinet at no charge, but that charges, when established, would be retroactive to the initiation of the service. Instinet would deposit $150,000 in an escrow account "to be released to NASD as directed by a final order of the Commission or upon [Instinet's] earlier consent," but would be remitted to Instinet on December 31, 1983 if neither of those two events happen. Accrued interest would go to the recipient.

Instinet argues that its technological lead-time already has been delayed 18 months and that investors "too long have been denied essential market information." Instinet further argues that, because of the fund it will voluntarily set up, the NASD will suffer no irreparable harm by such an interim order and that all parties will benefit by the market and other experience gained during the pendency of the review. Finally, Instinet argues that only it will be at risk during the interim relief period because its capital will be at stake and, if there are a significant number of subscribers, it will have to pay any fee differential at a later date.

The NASD agreed with the concept of interim relief, but proposed a different set of conditions. Specifically, the NASD suggested that Instinet receive only information on NMS Securities and that Instinet and its subscribers execute appropriate interim vendor and subscriber agreements with the NASD, and pay the proposed fees set forth in the NASD's proposed rule filing (SR-NASD-83-13) into escrow, with the escrow ultimately to be paid pursuant to Commission order. The Commission then sought to facilitate negotiations between the parties to see if an agreement on interim relief could be achieved.[26] However, this effort to reach an agreement was not successful.[27]

2. Discussion

a. *Basis for Interim Relief*

As indicated above, Section 11A(b)(5)(A) of the Act authorizes the Commission to stay, either summarily or after notice and opportunity for hearing, a prohibition or limitation with respect to access to services offered by a registered securities information processor. As discussed, in this proceeding both parties believe that it is appropriate for the NASD to provide quotation data with respect to all NMS Securities, as required by Rule 11Ac1-1, on an interim basis pending final resolution of the underlying issues relating to fees and the dissemination of the full NASDAQ quotation data stream. The Commission concurs. Congress has charged the Commission with the objective of assuring "the availability to

---

traders to insert quotations into the NASDAQ system [a service not to be provided by Instinet] is appropriate.

[23] Section 11A(b)(5)(A) of the Act allows the Commission to grant a stay of a denial of, or limitation on, access to services either summarily or after an opportunity for hearing.

[24] *See* letter to Jerome M. Pustilnik, Chairman, Instinet, from Richard Ketchum, Associate Director, Division of Market Regulation, dated July 19, 1983; and letter to Frank Wilson, General Counsel, NASD, from Richard Ketchum, Associate Director, Division of Market Regulation, dated July 19, 1983. Specifically, both parties were requested to address the four criteria used by the Commission and the courts in deciding on interim relief. Those criteria are:

1. Would the issuance of such relief be likely to serve the public interest?

2. Has the petitioner made a strong showing that it is likely to prevail on the merits of its application?

3. Would the issuance of such relief substantially harm other parties interested in the proceedings?

4. Has the petitioner shown that without such relief it will be injured irreparably?

See Securities Exchange Act Release No. 14784 (May 19, 1978), 14 SEC Dkt. 1159 citing Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (1952).

[25] *See* Supplemental Memorandum to Petition by Instinet for Review of Denial and/or Limitation of Access to Facilities and Services, dated July 29, 1983 ("Instinet Interim Relief Memo" or "Memo"); letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated August 2, 1983.

[26] All conversations with the parties specifically were held "on the record" and memoranda of the conversations have been placed in the public file (File No. 4-256).

[27] *See* letter to Richard G. Ketchum, Associate Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated August 11, 1983. In that letter the NASD also requests an opportunity to make an oral presentation to the Commission on the issue of interim relief. While the Commission, in its discretion, can provide an opportunity for an oral hearing on the issue of interim relief, the Commission has determined that an oral hearing will not serve a useful purpose in this case. Specifically, Section 11A(b)(5)(A) of the Act provides that the Commission may issue a stay of a prohibition or limitation on access either summarily or after notice and an opportunity for a hearing, "which hearing may consist solely of submission of affidavits *or* presentation of oral arguments" (emphasis added). As discussed, the Commission provided the parties an opportunity to present written data, views and arguments on the issue of interim relief. Both parties responded and further on-the-record conversations with the parties were conducted in response to these written submissions. Accordingly, both parties have had an adequate forum to present their views. Indeed, the NASD ackowledges in its August 11, 1983 letter that "the issues are now ripe for Commission resolution."

In a similar vein, the NASD requested the Commission to allow for further comment on interim relief if the Commission determined to adopt interim relief substantially different than the NASD proposal. While the Commission does no believe that the interim relief granted in this order is substantially different from NASD's proposal, even if it is viewed as such, in light of the extensive comments received on this issue to date the Commission does not believe that an opportunity for further comment at this time would be useful.

brokers, dealers, and inventors of information with respect to quotatins for and transactions in securities." [28] In this connection, the Commission believes that nationwide disclosure of market information, including transaction and quotation information in a useful form and on fair and reasonable terms, has been an essential aspect of the Commission's efforts to facilitate a national market system.[29] Such disclosure is necessary to assure the efficient pricing of securities, to maximize the depth and liquidity of the securities markets and to provide investors with the opportunity to receive best execution of their orders.

In order to facilitate the implementation of this disclosure policy, the Commission has adopted the consolidated transaction reporting rule,[30] and the consolidated quotation rule.[31] Although these rules initially applied to listed securities, pursuant to the NMS Securities Rule, a growing number of OTC securities are becoming subject to these rules.[32]

Recognizing that the entities that undertook to collect and disseminate market information potentially could frustrate the Act's goals of enhanced market information disclosure, Congress in the 1975 Amendments conferred upon the Commission pervasive regulatory authority over securities information processors.[33] In particular, the Act provides the Commission rulemaking authority to ensure that "all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity." [34]

The technical modifications necessary for supplying this information to the public for NMS Securities presently are in place. The Commission believes that the information sought by Instinet would be useful and important to investors. Moreover, with respect to NMS Securities, the NASD has acknowledged an obligation to supply vendors with quotation information pursuant to the consolidated quote rule. In light of these findings, and because adequate precautions have been taken to ensure that the NASD will be reimbursed for collecting and distributing the NMS Securities information,[35] the Commission believes that a grant of interim relief to Instinet is appropriate under the Act.[36]

In addition to the strong statutory basis for granting interim relief, the Commission also believes that a grant of such relief is fully consistent with the inquiry that the Commission and courts traditionally make in determining whether preliminary or interim adjudicative relief is appropriate.[37]

First, among other things, a court will inquire as to whether a grant of interim relief is in the public interest. In light of the strong statutory directive to provide professionals and the public with securities information,[38] the Commission believes that a grant of interim relief to Instinet would clearly serve the public interest. Specifically, the Commission notes that presently only the NASD through its NASDAQ Level 2 service offers information similar to that which Instinet's proposed service intends to offer. In this regard, the Commission believes that competition provided by Instinet's emergence in this market will be beneficial to the industry and investors. As of late, the heightened levels of share and trade volume, especially in OTC stocks, coupled with last sale reporting in OTC stocks, have spurred increased industry and investor demand for additional new securities informational services with respect to NMS Securities. In this respect, it appears that Instinet will be providing a unique service which could be attractive to investors. Accordingly, the Commission has determined that it is in the public interest for Instinet to be granted interim relief so that the public will have access to Instinet's new service at the earliest possible date.

Second, a decision to grant interim relief normally encompasses a finding of likelihood of ultimate success on the merits. With respect to quotation data for NMS Securities, because the Quote Rule requires the NASD to provide this information to vendors such as Instinet, it is clear that Instinet will ultimately prevail on the question of access. In addition, both parties acknowledge an obligation on the part of the NASD to give Instinet access to this information. While the Commission recognizes that ultimately the underlying proceeding will focus upon the terms of access, both parties will be fully protected during the interim relief period. Under these circumstances, and where both parties consent to the type of access orderd, it is less crucial, as a prerequisite to receiving access to the data requested, to require Instinet to demonstrate a strong probability of prevailing with respect to the size and composition of the fees.[39]

Third, a court will inquire into whether the grant of interim relief would harm other parties interested in the proceeding. The Commission has determined that no other parties interested in this proceeding will be harmed if Instinet is granted interim relief. To the contrary, as previously discussed, the Commission believes that the grant of interim relief, by providing better market disclosure will serve the public interest. The Commission has framed the stay so that the NASD is assured of being reimbursed for any fees which have been filed by the NASD that ultimately are determined to be appropriate by the Commission. In particular, the terms of interim relief will require Instinet to provide protection to the NASD to the full extent of the NASD's proposed fees.[40] In addition to

[28] Section 11A(a)(1)(C)(iii) of the Act.

[29] *See* Section 11A(c)(1) (B) and (C) of the Act.

[30] *See* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377.

[31] *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342.

[32] *See* text accompanying notes 2 to 4, *supra*.

[33] *See* Section 11A (b) and (c) of the Act.

[34] *See* note 29, *supra*.

[35] The Commission notes that courts generally grant interim relief to maintain the *status quo* during the pendency of the underlying proceeding. Although the Commission believes that a grant of interim relief to Instinet technically will change the *status quo* between the parties, such relief is appropriate in light of the agreement of the parties to commence data transmission, the Act's strong bias in favor of widespread dissemination of quotation and transaction information in NMS Securities, and the absence of any significant adverse impact of this stay on the NASD. In this respect, courts have granted interim relief of a mandatory nature where the equities favor the movant, Crawford v. Univ. of N.C., 440 F. Supp. 1047 (D.C.N.C. 1977), or where a clear legislative goal will be furthered by a grant of such relief, Ross v. Community Serv's., Inc. 396 F. Supp. 278 (D.C.Md. 1975), Motion granted 405 F. Supp. 831, 544 F.2d 514.

[36] At this time, however, the Commission is unable to make these findings for quotation data disseminated by the NASD for other NASDAQ securities. *See* Section 2.b. of this release, *infra*.

[37] *See* the four factors cited by the court in *Virginia Petroleum Jobbers Ass'n.*, note 24, *infra*.

[38] *See* text accompanying notes 28 to 32, *supra*.

[39] With respect to Instinet's probability of prevailing with respect to the size and composition of the fees, in the OPRA Proceeding the Commission found that a sufficient showing on reasonable likelihood of success on the merits has been made when petitioners raised a "serious legal question" as to whether certain fees operated as an impermissible limitation on access to services offered by a securities information processor. *See* Securities Exchange Act Release No. 14606 (March 24, 1978), 14 SEC Dkt. 599. In this regard, the Commission finds that Instinet's assertions that the NASD's proposed fees are not based solely on the cost of providing the service to Instinet but also, at least in part, on desiring to protect the present revenues received from the NASDAQ display terminals, raise significant questions as to whether those fees are fair and reasonable. Similarly, the Commission believes that the NASD's proposed subscriber fee raises serious fair competition concerns in light of the NASD's position as a potential competitor of retail vendor services with Instinet.

[40] *See* text accompanying note 46, *infra*.

the NASD being financially protected during the pendency of the stay, the NASD will not be burdened substantially with implementing technical modifications to NASDAQ to accommodate dissemination of the NMS Service because these modifications already are in place.

Finally, a court will normally inquire into whether the party requesting interim relief will suffer irreparable harm in the absence of such relief. The Commission believes that the strong statutory mandate is evidence of the importance to vendors and the public of receiving NMS Securities quotation information and thus, that Instinet would suffer irreparable harm if no interim relief were granted. The Commission believes that now that the technical enhancements are in place so that Instinet physically can begin receiving the NMS Service, it is important for Instinet to begin receiving information. Further, the Commission notes that appropriate lead time is a critical ingredient to effective innovation in the market for securities information services. The Commission recognizes that any further delays in Instinet's ability to receive the NMS Service may adversely affect the technological lead time available for Instinet to develop and market the service competitively. Specifically, Instinet appears to be in the forefront of the industry in planning new services based on the quotation data stream for NMS Securities. For instance, Instinet indicates that it will offer a dynamically updated montage of quotations in NMS Securities, a service which is not presently offered by the NASD or any other vendor. Instinet cannot commence marketing its new NMS terminal services, and thereby it may lose (1) potential customers [41] (2) revenues and (3) competitive advantages associated with being the first vendor, other than NASDAQ to offer such services. In this connection, the Commission notes that the NASD has stated that it has received indications of interest from at least three other vendors regarding access to NMS quotation data.[42]

b. *Conditions of Interim Relief*

In framing the conditions of interim relief, the Commission's primary concern has been the expedient dissemination of the quotation information to the public while protecting the interests of both Instinet and the NASD. In this regard, the Commission believes that the conditions proposed by the NASD, in large part, represent fair and workable conditions to govern the interim relief period while providing a high degree of protection to both parties.

As an initial matter, because the parties' negotiations only have focused on the provision of quotations with respect to NMS Securities and because technical preparations have been made to provide a feed for only these stocks, the Commission believes that, at least during the interim relief period, the NASD's proposal to provide Instinet with quotations in only NMS Securities is appropriate. The Commission also notes that while the NASD has acknowledged its obligation to provide data on NMS Securities, the Commission has not determined at the present time whether the NASD legally is obligated to provide data on all NASDAQ securities; indeed, the Commission specifically is seeking comment on that issue.

With respect to protection of the parties, the NASD's proposal protects the NASD by ensuring that an escrow account will exist to provide the NASD with full protection regardless of what fee schedule the Commission ultimately approves. Moreover, it would appear that the NASD's proposal would reduce the burdens placed on Instinet because it would decrease the amount of funds that Instinet would have to place into escrow during the interim relief period. Specifically, during the four months covered by the stay, even if all current Instinet subscribers were to purchase this service for all terminals, Instinet would have to deposit into escrow less than $100,000 (assuming that the NASD's proposed fees would require Instinet to deposit $100 per terminal). In the event that the underlying issues are not resolved by December 31, 1983, and the Commission determines to extend the interim relief, the Commission will revisit this issue in order to ensure that the payments have not become onerous.

The Commission, however, believes that during the interim relief period, Instinet should have the ability to determine its fee structure without any NASD intervention. Requiring Instinet's customers to pay subscriber charges directly to the NASD would limit Instinet's ability to market the service, and, in effect, impose the NASD's proposed fee structure on Instinet's subscribers prior to a determination by the Commission that such fee structure is consistent with the Act; nor can the Commission identify any significant adverse effect on the NASD if Instinet pays the funds directly into escrow. For instance, if Instinet desires to offer the service at a rate lower than the NASD's proposed fee schedule, only Instinet will bear the risk of a Commission decision setting rates higher than anticipated by Instinet. Furthermore, there appears to be no regulatory reason to deny Instinet this flexibility.

In addition, the Commission has determined that it is unnecessary for Instinet and its customers to execute interim agreements with the NASD.[43] The terms of the interim relief are controlled by Commission order; should abuses develop, however, the Commission is prepared to amend this order to address such abuses.[44]

The Commission finds that interim relief on these conditions is consistent with the Act. The Commission emphasizes, however, that it is making no determination whatsoever on the merits of the underlying proceeding. The Commission does not view its order as requiring any payment of fees by Instinet or its subscribers; rather, the Commission only is adopting the proposed NASD fee schedule as a method to calculate an escrow arrangement that will provide the fullest and fairest protection to the parties. Therefore, the Commission does not intend that its granting of interim relief on this basis should provide any inference as to the ultimate acceptability of the NASD's proposed fees.[45]

This order is not binding on any non-party that may request the data; the Commission will address any such requests on a case-by-case basis. This order will expire on December 31, 1983.

---

[41] Indeed, Instinet has indicated that is has lost at least one potential subscriber as a result of not being able to offer its subscribers the NMS Service in the past. *See* Instinet Interim Relief Memo, note 25, *supra*.

[42] *See* NASD letter dated August 11, 1983, note 27, *supra*.

[43] In its August 11 letter, the NASD suggested that the absence of subscriber agreements and direct subscriber charges would put it at risk, and that it would be unable to collect fees for past services. However, as the Commission has made clear in this order, the amount paid into escrow by Instinet may be used to ensure payment to the NASD of all fees eventually upheld by the Commission. Thus, if the Commission were to uphold the proposed subscriber fees, the NASD would bill those subscribers directly for any fees incurred after the approval of the NASD's fee proposal. Payment of all fees incurred during the period of interim relief would be a direct liability of Instinet and would be recovered from the funds in escrow.

[44] In order to help monitor Instinet's use of the data and payment of appropriate amounts into escrow, the Commission is imposing as a condition of its order that, upon request of the Commission or its staff, Instinet provide to the Commission information concerning the subscribers to its NMS Securities service, including the identity and number of subscribers and the number of terminals.

[45] The Commission recognizes that subscriber charges on a permanent basis in this instance raise important competitive issues. The Commission emphasizes that such charges have not been approved by the Commission at this time.

If the Commission has not resolved the underlying dispute by that date, it will address whether to grant further interim relief at that time.

VI. Order

On the basis of the above, the Commission has determined that it is appropriate under the Act to grant Instinet interim relief in this proceeding. Accordingly, pursuant to its authority under Section 11A(b)(5)(A) of the Act, the Commission hereby orders the grant of a temporary stay to Instinet subject to the following terms and conditions:

1. The NASD shall take immediate steps upon notice of this release to disseminate the NMS Service to Instinet no later than September 1, 1983.

2. Instinet shall take immediate steps to set up an escrow account for the purposes of this proceeding.

3. Instinet shall pay into escrow an amount equal to the fees delineated in the NASD's proposed rule change (SR–NASD–83–13) pursuant to the formula and rates detailed in that rule change (if such fees were in effect, including fees denominated both as vendor fees and subscriber fees). Such amounts shall not be deemed fees, but only a method of calculating any escrow deposit. Such amounts shall be paid monthly by Instinet upon notification by the NASD of the amount due by Instinet pursuant to the NASD's proposed vendor fee and the amount due per terminal pursuant to the NASD's proposed subscriber fee ("Escrow Amount"). The NASD shall not bill Instinet's subscribers directly, nor require Instinet's subscribers to enter into any interim contractual arrangement with the NASD.[46]

4. Instinet shall pay the Escrow Amount for services rendered by the NASD for the month within five business days after being provided with the information described in paragraph 3 above by the NASD following the end of the month.

5. Instinet shall make available to the Commission information concering the provision of the NMS Service, including the identity and number of its customers and the number of terminals which receive access to the NMS Service offered by Instinet, upon request of the Commission or its staff.

6. Instinet shall disclose in writing to all subscribers to Instinet's NMS Securities service the existence and nature of this interim relief and the terms of the NASD's proposal to impose direct subscriber fees.

7. The stay shall expire upon the earlier of December 31, 1983 or the conclusion of the proceedings reviewing the NASD's proposed fees.

8. At the conclusion of this proceeding, the contributions and interest accumulated in the escrow fund shall be distributed at the direction of the Commission, and shall be used in whole or in part to reimburse the NASD for charges incurred during the pendency of the proceeding and permitted pursuant to any fee schedule (including subscriber fees) approved by the Commission. If the escrow fund amount overstates the ultimate fees, Instinet shall be reimbursed from any unused escrow funds.

9. This grant of interim relief shall in no manner have any effect on any Commission determination with respect to the merits of the underlying proceeding.

10. Instinet should immediately notify the NASD of any decision not to accept the NMS Service pursuant to the terms of this order. In such an event, the NASD will not have to provide the NMS Service during the pendency of the proceeding.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-23019 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-01-M

[46] The Commission would expect that prior to September 1, 1983, Instinet and the NASD will enter into a processor-vendor contract to cover areas not addressed by this order. The Commission emphasizes, however, that such a contract is not to be viewed as a condition precedent for institution of the service.

[Release No. 23033; 70-6890]

Kentucky Power Co.; Proposed Execution of Interest Rate Hedging Agreements at Competitive Bidding and Issuance of Fixed-Rate Notes

August 16, 1983.

Kentucky Power Company ("KPCo"), 1701 Central Avenue, P.O. Box 1428, Ashland, Kentucky 41101, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a declaration pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2), 50(a)(2) and 50(b) promulgated thereunder.

In accordance with Commission orders [HCAR Nos. 22392 and 22855], KPCo has entered into a Revolving Credit Agreement for the issuance of up to $150 million of notes through December 31, 1987. Such notes bear interest at KPCo's option at either a fluctuating rate equal at all times to the prime rate (as defined in the Revolving Credit Agreement), or at a fixed rate per annum equal to ½ of 1% above the applicable London Interbank Offered ("LIBO") Rate until December 31, 1985, and ⅝ of 1% above the LIBO Rate thereafter through December 31, 1987. The proceeds of this borrowing are being applied toward construction costs of a generating station in which KPCo is purchasing a 15% ownership interest from an associated company.

KPCo seeks authorization to issue up to $150 million principal amount of unsecured, fixed-rate notes to banks from time to time through December 31, 1984, pursuant to a fixed-rate term loan agreement ("Term Loan Agreement"). The proceeds of these fixed-rate notes will be used to refinance borrowings under the Revolving Credit Agreement, or as a substitute for borrowings thereunder.

The fixed-rate notes will mature on a date not less than two nor more than ten years from the date of issuance. No compensating balances or commitment fees will be required. Each such note will bear interest not greater than 200 basis points over the prime rate, but in no event greater than 14% per annum. The proposed agreement will provide that in the event a note is paid prior to maturity, KPCo will be required to pay a fee to the lending bank calculated to reimburse the bank for the difference, if any, between the stated loan rate and the bank's opportunity rate calculated on the basis of Treasury obligation rates. In the event that any new fixed-rate borrowings under the Term Loan Agreement mature before the expiration of bank commitments under the Revolving Credit Agreement, KPCo intends to retain such commitments and to continue to pay a commitment fee of ⅝ of 1% on the unused amount of commitment, in order to enable it to repay fixed-rate borrowings at their maturity.

KPCo also proposes to enter into, on or before December 31, 1984, one or more hedging agreements ("interest rate swaps") with banks. KPCo will employ alternative competitive bidding procedures to execute these agreements as authorized by HCAR No. 22623. The interest rate swaps would involve the contractual exchange of interest payments. Under such contracts, KPCo would agree to make payments of interest at a fixed rate to a bank based on a maximum principal amount of $150

million, in return for the bank's agreement to pay interest to KPCo on the same principal amount and bearing interest at a variable rate that is a function of the LIBO rate payable by KPCo under the Revolving Credit Agreement. The aggregate amount of notes outstanding under the Revolving Credit Agreement, with or without any associated interest rate swaps, and under the proposed fixed-rate Term Loan Agreement would not exceed $150 million. KPCo's fixed-rate payments would not exceed a ceiling of 14% and will cease no later than December 31, 1987, the maturity date of its Revolving Credit Agreement.

KPCo anticipates that the floating rate paid to it by a bank would not fully cover its LIBO Rate obligations under the Revolving Credit Agreement. For example, the bank may agree to pay KPCo the present LIBO Rate and KPCo would be required to pay any percentage over LIBO payable under the Revolving Credit Agreement. Also, any additional fees, such as a bank's swap arrangement fee, may be paid in a lump sum at commencement or be reflected in the fixed-rate payment to the bank. A typical interest rate swap agreement would contain early termination provisions, pursuant to which KPCo may be required to make, or would be entitled to receive, a settlement payment in the form of liquidated damages in the event of early termination.

The declaration 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 September 9, 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 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 and will receive a copy of any notice or order issued. After said date, the declaration, as 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. 83-23016 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20089; SR-NASD-83-13]

National Association of Securities Dealers, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change

August 16, 1983.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C., 20006, has filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] a proposed rule change [3] that would establish fees for the receipt of quotation information concerning over-the-counter ("OTC") securities designated as National Market System ("NMS") Securities pursuant to Rule 11Ac2-1 under the Act ("NMS Securities Rule").[4]

Pursuant to Rule 11Aa1-1 [5] under the Act, the NASD is required to make available to the public the complete quotation information disseminated by market makers in NMS Securities. On three occasions, the Commission granted the NASD an exemption from the requirement of disseminating this NMS Security quotation information,[6] pending discussions between the NASD and a vendor of securities information, the Institutional Networks Corporation ("Instinet"), concerning the terms and conditions under which this information would be made available. No agreement was reached in these discussions, and consequently the NASD filed the proposed rule change establishing fees for NMS Security quotation information that were, in essence, the same as the fees that the NASD had proposed in its last offer to Instinet.

Specifically, the NASD proposed a fee of $3,200 a month for vendors receiving the NMS Security quotation data stream, to be reduced by fees received from new subscribers not previously subscribing to quotation information offered by the NASD's NASDAQ subsidiary in its Level 2 or 3 services.[7] In addition, the NASD proposed a monthly per-terminal subscriber fee of $75 multiplied by the percentage (rounded to the nearest 25%) that NMS Security dollar volume of trading bears to the total dollar volume of securities included in the NASDAQ system, plus $75 multiplied by the percentage (rounded to the next 25%) that NMS Security share volume of trading bears to total share volume of trading in the NASDAQ system.

Instinet responded to this proposed rule change by filing (1) a comment letter opposing approval of the NASD's rule filing,[8] and (2) a petition with the Commission requesting Commission review of the proposed NASD fees as a denial of or limitation on access to services offered by a registered securities information processor, NASDAQ, pursuant to Section 11A(b)(5)(A) of the Act.

In response to this Petition, the Commission today issued an order instituting proceedings to review the NASD's proposed fees for NMS Securities quotation information, pursuant to Section 11A(b)(5) of the Act. A detailed discussion of the background of and reasons for that order are contained in Securities Exchange Release No. 20088 (August 16, 1983) ("Review Proceeding Release"). Because that review proceeding will involve a careful scrutiny of the operation and basis of the proposed fees and could result in the setting aside or modification in whole or in part of these fees, the Commission is commencing concurrent proceedings under Section 19(b) to determine whether the NASD's proposed fees are consistent with the Act and should be approved or disapproved. The potential grounds for disapproving the proposed rule change under consideration by the Commission are that, for reasons discussed more fully in the Review Proceeding Release, the proposed rule change may be inconsistent with Sections 11A and 15A, and the objectives set forth in Section 11A of the Act.

II. Request for Comments

Accordingly, the Commission requests that interested persons provide written submissions of their views, data, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] File No. SR-NASD-83-13. Notice of the filing was given by issuance of a Commission release and by publication in the Federal Register. *See* Securities Exchange Act Release No. 19864 (June 17, 1983), 48 FR 29086.

[4] 17 CFR 240.11Aa2-1. For further information concerning the NMS Securities Rule, see Securities Exchange Act Release No. 17540 (February 17, 1981), 46 FR 13992, and Securities Exchange Act Release No. 19797 (May 20, 1983), 48 FR 24823.

[5] 17 CFR 240.11Ac1-1.

[6] *See* Securities Exchange Act Release Nos. 18585, (March 23, 1982), 47 FR 13285; 19118 (October 12, 1982), 47 FR 46790, and 19864 (March 3, 1983), 48 FR 10175.

[7] The NASD's NASDAQ subsidiary operates an electronic communication system through which quotations of market makers in securities traded in the NASDAQ system are collected and disseminated to other market makers and the public. NASDAQ operates both as a collector of this quotation information and as a vendor of the information to broker-dealers and the public.

[8] *See* Letter from Jerome M. Pustilnik, Chairman, Instinet, to George A. Fitzsimmons, Secretary SEC, dated July 14, 1983.

arguments with respect to the potential grounds of disapproval identified above. In this regard, commentators may wish to address the specific questions raised in the Review Proceeding Release. Interested persons are invited to submit comments regarding the proposed rule change by October 15, 1983. Persons desiring to submit written data, views, and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–83–13.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD.

It is hereby ordered, pursuant to Section 19(b)(2) of the Act, that proceedings be instituted to determine whether to approve or disapprove proposed rule change NASD–83–13.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–23018 Filed 8–19–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13437; 812–5502]

National Commercial Banking Corporation of Australia Limited and National Australia Funding (Delaware) Inc.; Application

August 15, 1983.

Notice is hereby given that National Commercial Banking Corporation of Australia Limited ("Bank"), and its wholly-owned subsidiary, National Australia Funding (Delaware) Inc. ("Funding," jointly with the Bank, the "Applicants") c/o Michael W. Weir, Esq., Sullivan & Cromwell, 125 Broad Street, New York, N.Y. 10004, filed an application on March 23, 1983, and an amendment thereto on July 11, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act in connection with the proposed issuance of commercial paper within the United States. 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, and to the Act and the rules thereunder for the text of the applicable sections and rules.

Applicants state that the Bank was formed by the merger, on October 1, 1981, of two of the seven largest Australian banks, The National Bank of Australasia and The Commercial Banking Company of Sydney Limited. Applicants further state that as of September 30, 1982 (the date of its latest audited financial statements) the Bank had assets of more than $21.5 billion (at the rate of exchange prevailing on September 30, 1982—1.0526 United States dollars to the Australian dollar) and capital funds (including reserves) of $966 million. Applicants represent that the Bank is the third largest trading bank in Australia and accounts for 21.37% of total Australian bank deposits.

The Bank states that its principal business is the receipt of deposits and the making of loans. According to the application, the Bank is authorized to carry on a banking business by the Australian Banking Act of 1959 (as amended), which provides for the protection of depositors and the regulation of, among other things, statutory reserves, foreign currency, loan policies, foreign exchange, interest rates and bank statistics. Applicants further state that as an Australian bank, the Bank is subject to regulation by the Reserve Bank which is authorized to require any bank to supply it with specified information relating to its financial stability, and may investigate the affairs of, any bank that is, or is likely to become, unable to meet its obligations.

Applicants further represent that, in addition to regulation by the Australian banking authorities, the Bank, as a foreign bank with two branches and an agency in the United States, is subject to regulation in this country under the International Banking Act of 1978 and the Bank Holding Company Act of 1956, as amended. In this regard, it is stated that the Bank is subject to extensive reporting requirements in the United States such as the requirement that it file with the Board of Governors of the Federal Reserve System an annual report containing detailed information with respect to the Bank and its United States subsidiaries, including Funding.

Applicants state that Funding was organized under the laws of the State of Delaware on March 18, 1983, and will have an initial capitalization of $10,000. Applicants further state that all the outstanding capital stock of Funding will be purchased for cash and held by the Bank. According to the application, Funding's sole business will be the provision of funds to the Bank, and substantially all of Funding's assets will consist of amounts receivable from the Bank.

The Bank proposes to issue and sell, or to cause Funding to issue and sell, in the United States unsecured prime quality commercial paper notes (the "notes") in bearer form and denominated in United States dollars. Applicants state that the notes will be issued and sold (in denominations no smaller than $100,000) to a commercial paper dealer in the United States which will reoffer the notes as principal to investors in the United States. Applicants state that it does not currently intend to sell the notes in the United States in excess of an aggregate of $200 million at any one time outstanding.

Applicants state that payment of the principal, interest and premium, if any, on notes issued and sold by Funding will be unconditionally guaranteed by the Bank. According to the application the proceeds of the sale of the notes by Funding (to the extent not applied to the repayment of maturing notes or to the payment of minimal current expenses) would be placed on short-term deposit with, or loaned to, the Bank. Applicants represent that those deposits or loans would be withdrawn by, or repaid to, Funding on terms that are substantially similar to those of Funding's notes and that will allow Funding to make timely payments on the notes.

Applicants state that the notes, whether issued as direct liabilities of the Bank or unconditionally guaranteed obligations of Funding, will rank *pari passu* among themselves, prior to equity securities of the bank and equally with all other unsecured indebtedness of the Bank, including liabilities to depositors, except that, in the event of the Bank becoming unable to meet its obligations or suspending payment, the assets of the bank in Australia are available to meet its deposit liabilities in Australia in priority to all its other liabilities.

Applicants undertake to ensure that the notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicants also undertake to ensure that the dealer will provide each offeree of the notes prior to purchase with a memorandum which briefly

describes the business of the Bank, including its must recent publicly available fiscal year-end balance sheet and profit and loss statement, audited in such manner as is customarily done for the Bank by its auditors. Applicants represent that the memorandum will describe differences which are material to investors, if any, between the accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by banks in the United States. Applicants undertake that the memorandum and financial statements will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of the Bank.

Applicants represent that the terms of the notes, including their negotiability, maturity and minimum denomination, the amount outstanding at any given time and the manner of offering them to investors will qualify them for the exemption from registration under Section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Applicants undertake that neither the Bank nor Funding will issue and sell notes until it has received an opinion of its United States legal counsel that the notes would be entitled to a Section 3(a)(3) exemption. Applicant does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act. Applicants represent that the presently proposed issue of notes and all future issues of debt securities (not including deposits) in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that its United States counsel shall have certified that such rating has been received.

The Bank may appoint a financial institution in the United States as its authorized agent to issue its notes from time to time. Applicants undertake to appoint either that financial institution, Funding, or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on a note and instituted by the holder of such note in any State or Federal court. The Bank undertakes that it will expressly accept the jurisdiction of any State or Federal court. The Bank undertakes that it will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Applicants represent that the appointment of an authorized agent to accept service of process and the consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes have been paid. Applicants further represent that the Bank will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the notes or otherwise in connection with the notes. Applicants state that the authorized agent will not be a trustee for the noteholders and will not have any responsibilities or duties to act for such holders as would a trustee. Applicants consent to any order granting this application being expressly conditioned on compliance with the undertakings set forth above and the undertakings described below.

The Bank may, from time to time, offer other debt securities, but not shares of its capital stock, for sale in the United States. Funding may also, from time to time, offer other debt securities for sale in the United States which will be unconditionally guaranteed by the Bank and the proceeds of which will similarly be deposited with, or loaned to, the Bank. Applicants undertake that any future offering of the Bank or Funding's securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of the Bank, its business and its financial condition as those customarily used by United States bank holding companies in offering similar securities under similar circumstances, and undertakes to ensure that each offeree of such securities will be provided with such disclosure documents.

Applicants further undertake, in connection with any future offering in the United States of its debt securities (not including deposits), to appoint a United States person as agent to accept any process which may be served in any action based on those securities and instituted in any State or Federal court by a holder of those securities. Applicants also undertake that the Bank will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. The appointment of an agent to accept service of process and the consent to jurisdiction will be irrevocable so long as the securities remain outstanding and until all amounts due and to become due in respect to those securities have been paid.

In support of the relief requested Applicants state that, among other things, the Bank's compliance with a number of substantive provisions of the Act would, as a practical matter, conflict with its operation as a bank and lending institution and that the Bank would thus be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with such provisions of the Act. Applicants assert that to exclude foreign banks from selling securities in the United States would be both inherently inequitable and in direct conflict with the objective of the International Banking Act of 1978 which was intended to place United States and foreign banks on a basis of competitive equality in their transactions in the United States.

Applicants further assert that the rationale for granting the exemption for the Bank extends to Funding as well because of the close relationship between the two companies and because the obligations of Funding, in effect, will be obligations of the Bank. Applicants state that payment of the notes will not depend on the operations or investment policy of Funding, and the holders of the notes may look to the Bank for payment. Applicants finally assert that the public policy concerns which led to the enactment of the Act are not applicable to Funding, nor do the holders of Funding's securities require the protection afforded by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 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 Applicant at the address stated above. Proof of servcie (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. 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. 83-23014 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20084; File No. 7-6838]

Self-Regulatory Organizations; Pacific Stock Exchange; Order Denying Application for Unlisted Trading Privileges (Triton Group, Ltd.)

August 15, 1983.

I. Introduction

On June 27, 1983, the Pacific Stock Exchange, Inc. ("PSE") filed with the Commission an application for unlisted trading privileges ("UTP") in the common stock of Triton Group Ltd. ("Triton") pursuant to Section 12(f)(1)(C) of the Act.[1] The PSE simultaneously filed with the Commission applications to withdraw and strike Triton common stock and Series A Convertible Preferred Stock ($1 par value) from listing, stating that the delisting application was made at the issuer's request because the issuer perceived the PSE's off-board trading restrictions as detrimental to its interests. The PSE requested that the effectiveness of the delisting be concurrent with the Commission's action with respect to PSE's UTP application, and the Commission today has approved the application for delisting.

Because Triton does not substantially meet either the New York Stock Exchange ("NYSE") or American Stock Exchange ("Amex") listing standards, it is not a reported security, and would not, after delisting, qualify as a national market system security.[2] As a result, it is not subject to the current last sale reporting requirements of Rule 11Aa3-1 and OTC market makers would not be required to report last sale information on a real time basis. Thus, as the Commission stated recently in its order denying the PSE's application for UTP in the common stock of Xonics, Inc., a non-reported security,[3] the potential benefits of last sale reporting from both exchange and OTC markets would not be present to counteract the potential negative effects of increased market fragmentation. Moreoever, while quotation information would be available from both markets, PSE quotations would not be available on the same service as OTC quotation information, thus raising an additional potential for confusion among market participants and making more difficult the task of obtaining the type of complete and accurate information necessary for efficient execution of orders. Consequently, the Commission is unable to find at this time that the grant of UTP in Triton would be consistent with the standards set forth in section 12(f)(2) of the Act.[4]

In addition, the Commission believes that denying the PSE's application would be consistent with the Congress' directive that, in granting UTP in OTC securities, the Commission consider the evolution of a national market system and evaluate the effects that UTP in OTC securities would have on that system. Transaction reporting, including both quote and last sale information, has always been considered a fundamental element of the national market system and critical to the effort to provide for efficient concurrent trading of securities in both exchange and OTC markets.[5] Since complete real time quotation and transaction reporting enables market professionals and investors to better evaluate execution opoerunities, thereby alleviating concerns regarding market fragmentation, the commission is unable to make the necessary findings under Section 12(f)(2) to approve UTP in a non-reported stock such as Triton.

The Commission has determined to deny the PSE application for UTP in Triton Group Ltd. common stock because it does not find that a grant of UTP in non-reported securities not listed on another exchange would be consistent with the requirement of Section 12(f)(2) that such UTP be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission has taken into account the public trading activity of the security, the character of such trading, the impact that an extention of UTP would have on existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. Because transactions in Triton, as a non-reported security, would not be required to be reported on a real time basis pursuant to Rule 11Aa3-1 under the Act, increased potential exists for market fragmentation and for the creation of hidden markets, with the further potential for decreased pricing efficiency and continuity. The Commission is therefore concerned that granting UTP in Triton could have a significant adverse impact on existing trading markets. Insofar as complete transaction reporting, including quote and last sale information, is a fundamental element of the national market system and critical to efficient concurrent trading of securities in both exchange and OTC markets, the Commission is unable to determine that the national market system has evolved to such an extent as to make the grant of UTP appropriate in the context of non-reported securities not listed on an exchange.

Accordingly, it is ordered that, pursuant to Section 12(f)(2) of the Act, the PSE application for unlisted trading privileges in the Common stock of Triton Group Ltd. be denied.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-23015 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-01-M

---

[1] Securities Exchange Act Release No. 19971 (July 14, 1983). Section 12(f)(1)(C) of the Act, added as part of the Securities Acts Amendments of 1975, permits an exchange to seek UTP in securities traded solely over-the-counter ("OTC") Section 12(f)(2) specifically directs the Commission, whether an application for UTP in a stock traded solely OTC is consistent with the maintenance of fair and orderly markets, to: Take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that had been made toward the development of a national market system * * *.

That section further provides that the Commission shall not grant an application: * * * if any rule of the national securities exchange making application would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

[2] A reported security is one for which transactions are reported by the Consolidated Tape Association ("CTA"). To have transactions reported by the CTA, the security must be listed on the NYSE or Amex or listed or admitted to UTP on one of the regional exchanges and substantially meet the Amex listing standards.

[3] *See* Securities Exchange Act Release No. 19609 (March 17, 1983).

[4] The Commission received two letters commenting on the PSE's UTP application. In a letter from Jim Gallagher, President, PSE, to John S. R. Shad, Chairman, SEC, dated July 19, 1983, Mr. Gallagher stated that, despite the Commission's determination in Xonics, Inc., the PSE's application in Triton is distinguishable in that Triton does not oppose the PSE's application, whereas Xonics, Inc. had opposed any grant of UTP to the PSE following its delisting. The Commission also received a letter from Triton stating that it does not object to the PSE application. *See* letter from William D. Sivitz, Executive Vice President, Triton, to Richard G. Ketchum, Associate Director, SEC, dated July 19, 1983. The Commission does not believe that the issuer's non-objection to the PSE application in this case is cause for distinguishing the Commission's determination in its order denying UTP in Xonics, Inc.

[5] *See* e.g., Securities Exchange Act Rules 11Aa2-1 (designation of national market system securities), 11Aa3-1 (relating to dissemination of transaction reports and last sale data with respect to transactions in reported securities), and 19c-3.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-5 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: Study the feasibility of common procedures and airspace designation between the United States and Canada to alleviate confusion among the flying public as well as control agencies.

DATE: Beginning September 12, 1983, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 9 A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, Room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by September 8, 1983. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on August 12, 1983.

Jimmie Walker,

Acting Manager, Special Projects Staff Air Traffic Service.

[FR Doc. 83-22818 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 149—Airborne Distance Measuring Equipment (DME); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 149 on Airborne Distance Measuring Equipment (DME) to be held on September 14-16, 1983 in the RTCA Conference Room, One McPherson Square, 1425 K Street, Suite 500, NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourth Meeting Held on May 4-6, 1983; (3) Report on Coordination with the European Organization for Civil Aviation Electronics (EUROCAE) Working Group 25; (4) Report on Coordination with RTCA Special Committee 151 (Airborne MLS Area Navigation Equipment); (5) Review Task Assignments From Third Meeting; (6) Review Fifth Draft of Committee Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on August 10, 1983.

Karl F. Bierach,

Designated Officer.

[FR Doc. 83-22816 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Historic Bridges; Programmatic Section 4(f) Evaluation and Approval

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has prepared a final programmatic Section 4(f) evaluation for certain federally assisted highway projects affecting bridges which are on or eligible for inclusion on the National Register of Historic Places. This provides a procedure which will simplify and streamline compliance with Section 4(f) requirements. Comments were solicited in September 1982 on the proposed evaluation. Responses to the comments received are discussed below.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Grant, Office of Environmental Policy, Room 3232, 202/426-0106; Ms. Deborah Dull, Office of the Chief Counsel, Right-of-Way and Environmental Law Division, room 4230, 202/426-0800, FHWA, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday.

SUPPLEMENTARY INFORMATION: This action involves the rehabilitation or replacement of historic bridges and the special consideration which must be given them because of their historic character.

Transportation Mandates

The FHWA has been mandated by the Congress of the United States to provide its citizens with a safe and efficient transportation network. An integral part of this network is the various bridges that allow a roadway to pass over other highways, railroads, land forms, bodies of water, or other obstacles. Many of these bridges have become or are becoming structurally deficient, physically deteriorated, or functionally obsolete. When there bridges must ultimately be closed, there is usually a great hardship imposed on the residents of the area and other users of this portion of the transportation network.

The Congress of the United States recognized the problem with unsafe bridges in the Federal-Aid Highway Act of 1970 and created the "Special Bridge Replacement Program," 23 U.S.C. 144. Congress has continued to show an interest in this problem and established, in the Federal-Aid Highway Act of 1978, the Highway Bridge Replacement and Rehabilitation Program (HBRRP), declaring in 23 U.S.C. 144(a):

> * * * it to be in the vital interest of the Nation that a highway bridge replacement and rehabilitation program be established to enable the several States to replace or rehabilitate highway bridges over waterways, other topographical barriers, over highways, or railroads when the States and the Secretary finds that a bridge is significantly important and is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

This program provides funds to specifically rehabilitat or replace bridges (including those not on the Federal-aid highway system). Regulations implementing the HBRRP are set forth in 23 CFR Part 650, Subpart D. These regulations require a sufficiency rating be assigned each bridge based on the structural adequacy and safety of the bridge, the essentiality of the bridge for public use, and the

seviceability and functional obsolescence of the structure. Bridges with a low sufficiency rating are given high priority for rehabilitation or replacement under the HBRRP. Other categories of Federal-aid funds may also be used for bridge rehabilitation or replacement.

Historic Bridges

Many of the Nation's bridges are significant for their historical, architectural, or engineering features. It is a Federal policy to fully consider the preservation of structures that are on or eligible for the National Register of Historic Places. The FHWA has encouraged and made Federal funds available for State highway agencies to survey and inventory the bridges on the highway system for their historical and engineering significance. Any information from such an inventory, obtained in advance of a proposed bridge rehabilitation or replacement project, would enable the FHWA, the State highway agency (SHA), and the State Historic Preservation Officer (SHPO) to quickly identify the historic value of the specific bridge and the impact that the project would have on the historic resources of the State as a whole. Thus, a completed inventory would reduce project development time and would allow the State to better manage its historic resources. Completion of such an inventory would not, however, have any bearing on the need to replace or rehabilitate any specific bridge.

Experience with old and deficient bridges has shown that:

1. If the sufficiency rating indicates that the bridge requires rehabilitation or replacement, the options available are typically few. Thus, bridges with very low sufficiency ratings normally must be substantially rehabilitated, replaced, or abondoned.

2. Historic bridges are, in many instances, historic because of the architectural and engineering significance of the structures. However, bridges may also be historic because of the role they played in the history of a particular locality.

3. Impacts of the typical bridge rehabilitation or replacement project on individual structures tend to be very similar from project to project irrespective of the surroundings or the particular type of structure involved. While in some instances rehabilitation can be undertaken with little or no impacts to historic bridges, in other instances rehabilitation of a bridge to modern structural standards can destroy the historic integrity of the bridge, even if the bridge is not totally replaced. Where the replacement bridge is on the same location as the old bridge, the old bridge must be either dismantled or demolished. If the bridge is replaced on a new location and no responsible party can be located to maintain or preserve the old bridge, the old bridge must either be dismantled or demolished or its use limited to the type and volume of traffic which the bridge can safely service during its remaining life.

4. Bridges of national, State, or local historic significance that are on or eligible for the National Register of Historic Places are afforded full consideration by the National Historic Preservation Act of 1966, as amended. (NHPA) (16 U.S.C. 470, et seq.), by the FHWA's National Environmental Policy Act (NEPA) process, 23 CFR Part 771, and by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) (similar language is contained in 23 U.S.C. 138). The FHWA's procedures assure that historic sites (including bridges) are identified and that Federal-aid projects are planned in a way that avoids the use of such sites when feasible and prudent alternatives exist in order to minimize harm to the historic nature of such sites. The process involves the SHPO, the Advisory Council on Historic Preservation (ACHP), and other interested parties and agencies.

Statutes Requiring that Special Considerations be Given to Historic Bridges

As previously stated, many of the bridges that are in need of rehabilitation or replacement are either on or eligible for the National Register of Historic Places. Any FHWA funded work on these bridges is subject to requirements of Section 106 of the NHPA (16 U.S.C. 470(f). Section 106 requires Federal agencies to afford the ACHP an opportunity to comment on any undertaking that may affect a property listed on or eligible for the National Register of Historic Places and requires the agency to consider those comments before taking action.

The replacement or major modification of bridges on or eligible for the National Register is also subject to Section 4(f). Section 4(f) states that the Secretary of Transportation may approve a transportation program or project that would use publicy owned land from a public park, recreation area, wildlife and waterfowl refuge, or historic site of National, State, and local significance only if (1) there is no feasible and prudent alternative to the use of such land and (2) the program or project includes all possible planning to minimize harm resulting to the Section 4(f) property from the use. The authority to make this approval has been delegated by the Secretary to the FHWA Administrator and has been redelegated to other FHWA officials.

The first step in the Section 4(f) process is the evaluation of alternatives to avoid the use of the Section 4(f) property and a preliminary assessment of mitigation measures to be implemented should use of the Section 4(f) property be unavoidable. This preliminary report is provided to the official having jurisdiction over the Section 4(f) property, to the Department of the Interior (DOI) and, as appropriate, to the Department of Agriculture (DOA) and the Department of Housing and Urban Development (HUD) for comment. A minimum time of 45 days is allowed for receipt of comments. Often the comment period is extended to afford additional time. Comments received are then reviewed and analyzed together with project development studies to determine if there is a feasible and prudent alternative which avoids the Section 4(f) property. If it is determined by FHWA that there is no feasible and prudent alternative to avoid use of the Section 4(f) property, the process continues until the FHWA is satisfied that the project proposal includes all possible planning to minimize harm. At this point a final Section 4(f) document is prepared which states the reasons why alternatives to avoid use of the Section 4(f) property are not feasible and prudent and which specifies the planning which has taken place and the measures that will be taken to minimize harm.

Consideration of Environmental Requirements on a Programmatic Basis

When a particular program or activity has a limited purpose and function and when the range of alternatives is well known and predictable, it is then possible to execute a portion of the administrative action for the program as a whole, i.e., to take a programmatic action. This is the case with replacement of historic bridges. As noted earlier, the replacement of deficient bridges is an activity of narrow and specific purpose having a predictable range of alternatives. Consequently, this activity is well suited to a programmatic treatment. Indeed the States of Wisconsin, Massachusetts, and Georgia have developed, and the FHWA has approved, statewide programmatic Section 4(f) evaluations.

The nationwide programmatic Section 4(f) evaluation which is the subject of this notice is not a regulation or a rulemaking activity. It is a consolidated

documentation of the repetitive portions of evaluations which would otherwise be performed on a project-by-project basis. It contains and specifies procedures which must be followed if it is to be used for processing projects that involve bridges on or eligible for the National Register.

What This Programmatic Evaluation and Approval Will Accomplish

This programmatic Section 4(f) evaluation will *not* change or affect any of the procedures required by the NHPA, nor will it lessen the protection afforded to historic bridges. The purpose of this document is to provide a document which will simplify and streamline compliance with the Section 4(f) requirements and shorten the required processing time. This will be accomplished by providing a collective processing of the coordination with DOI, DOA, and HUD for projects which are similar in nature. This eliminates the requirement for a separate project-specific Section 4(f) document, the delay associated with the preparation and the distribution of that document, the 45-day delay while comments are solicited, and the internal processing of the final document within the FHWA. The FHWA estimates this streamlined approach will save from 3 to 6 months in project development time. This estimate of timesavings tends to be confirmed by a comment received from the Wisconsin Department of Transportation. Wisconsin has had a programmatic Section 4(f) for historic bridges in effect since January 1980 and it indicates substantial timesavings (as much as a year) by employing the statewide programmatic Section 4(f). The application of this programmatic Section 4(f) document will constitute compliance with the Section 4(f) requirements and will eliminate the need for the preparation of separate site-specific Section 4(f) documents which are repetitive in nature because of the limited options available.

How the Programmatic Evaluation and Approval will be Used

Before this programmatic Section 4(f) approval can be used for a particular highway improvement, an analysis of all the studies necessary to document the fact that there are no feasible and prudent alternatives to the use of the historic bridge will have to be completed. This analysis will be accomplished by comparing the project under consideration with the applicability, alternatives, and mitigation criteria in the programmatic Section 4(f) evaluation. If the FHWA Division Administrator then concludes that the programmatic Section 4(f) evaluation is applicable, the project files must be so documented. If for any reason the project which is being proposed does not fit the criteria in the programmatic evaluation, a separate, individual Section 4(f) document will be prepared and processed under the procedures set forth in FHWA regulations, 23 CFR 771.135. In addition to meeting the above criteria, the programmatic Section 4(f) evaluation and approval can be used only when there is agreement on the measures to minimize harm developed in consultation with the SHPO and the ACHP.

For projects on which this programmatic evaluation is applied, the FHWA Division Office files for the project will contain all of the documentation previously discussed with respect to (1) the alternatives that were evaluated, (2) the mitigation measures to be included in the project, and (3) the consultations and coordination with the public governmental body which owns the structure, the SHPO, the ACHP, and any other State or Federal agency whose expertise the FHWA determines would provide valuable input into the decision to be made by the FHWA Division Administrator. The use and application of this programmatic Section 4(f) evaluation will be monitored through periodic program reviews carried out by the FHWA Environmental Programs Division located in the Washington Headquarters.

Actions Taken to Date

The notice of availability of a draft of the proposed Section 4(f) evaluation was published in the **Federal Register** on September 16, 1982, requesting public and agency comment. In addition, copies of the draft evaluation were sent to various State and national historic organizations and to several Federal agencies for comment.

After careful analysis of all comments received, a decision was made to finalize and approve this final programmatic Section 4(f) evaluation.This decision was based upon a belief that the programmatic evaluation assures full compliance with the requirements of Section 4(f), while at the same time reducing duplicative administrative processing and delays for necessary projects to rehabilitate or replace deficient historic bridges.

Comments and Responses on the Draft Programmatic Section 4(f) Evaluation

Forty-five responses to the request for comments were received. Of these, 30 generally favored the proposal, 10 opposed it, and 5 took no specific position, but raised certain questions for clarification or explanation. The respondents included 27 State SHA's, 8 SHPO's DOI, HUD, the Office of the Secretary of DOT, the ACHP, the National Trust for Historic Preservation, and the National Conference of SHPO's, in addition to individuals and other public interest groups.

Several commentors were under the impression that the procedures pursuant to Section 106 of the NHPA would not apply in those cases where the programmatic Section 4(f) is used. This assumption is incorrect. Section 106 applies in all cases where a project involves any historic property which is on or eligible for the National Register and Section 106 procedures will be followed in all instances. The section which deals with applicability and measures to minimize harm has been rewritten to clearly state this requirement.

Concern was expressed by some commentors that a programmatic Section 4(f) would weaken the commitment to protect historic bridges. This is not correct. It is the FHWA's resolve in preparing this document to maintain, without diminution, the protection of historic bridges. In the FHWAs view, the use of the programmatic Section 4(f) will strengthen the Section 106 process and the role of the SHPO. This programmatic Section 4(f) can be applied only to those individual projects where it has been cearly established that avoidance of use of the historic bridge is not feasible and prudent. Furthermore, this programmatic Section 4(f) applies only where agreement has been reached through the Section 106 procedures. The applicability section has been revised to clarity this condition. The prospect of being able to apply this programmatic Section 4(f) to an individual project provides an incentive for the FHWA and the State to promptly reach an agreement with the SHPO and the ACHP to complete the Section 106 process.

Based on several comments, there appears to be concern in the historic preservation community that the programmatic Section 4(f) evaluation promotes bridge demolition over rehabilitation, relocation, or other alternatives that would avoid use of the historic bridge. This was not intended. The programmatic Section 4(f) document includes procedures which the FHWA will use to fully evaluate all alternatives and to assure a clear conclusion that there are no feasible and prudent alternatives to using the bridge. The

programmatic Section 4(f) document has been rewritten to clearly indicate that a demolition alternative can be selected only after it has been determined that there are no no feasible and prudent alternatives to the use of the bridge. The alternatives section addresses only alternatives that would completely avoid the "use" of the bridge. Three alternatives were presented in the draft programmatic Section 4(f): (1) No build, (2) Build on new location without using the old bridge, and (3) Rehabilitation without affecting the historic integrity of the bride. While these three alternatives comprise all alternatives to using the bridge, the findings section of the Section 4(f) evaluation has been revised to include several specific actions suggested by commentors as examples within each of these three alternatives.

One of the most frequent comments received was a request to clarify the following sentence in the mitigation section: "The analysis of possible measures to minimize harm must include measures which have a lesser, although substantial, impact on the historic integrity of the bridge." Thus, for example, if all avoidance alternatives are eliminated because a project involves situations like those set forth in the findings section, then rehabilitation alternatives having less impact than demolition on the historic integrity of the bridge must be explored. Since any alternative that affects the historic integrity of the bridge is not an alternative to "use" of a bridge under Section 4(f), this type of alternative cannot rightfully be included in the alternatives section of this determination. Instead, this type of alternative is considered a mitigation technique. The "Measures to Minimize Harm" section of this final evaluation has been revised to include the requirement that this specific mitigation measure be fully evaluated and utilized where possible.

Several commentors suggested that FHWA require that statewide bridge inventories be completed before the programmatic Section 4(f) is used in a State. It is acknowledged that statewide bridge inventories are worthwhile and useful because they provide a means for a State to obtain a statewide perspective of its historic bridge resources, as well as those of adjacent States which have also completed their inventories. The FHWA encourages and provides funding for such inventories. However, a comprehensive knowledge of historic bridge resources has no bearing on the question of avoiding or dealing with a specific historic resource. Bridges proposed for replacement with Federal-aid funds are deficient in some physical, structural, or functional way. Whether or not these bridges meet the criteria for listing on the National Register of Historic Places is separate and independent of their being deficient and their need for replacement. This is the case on both an individual Section 4(f) evaluation and a programmatic statewide or nationwide evaluation. The programmatic Section 4(f) procedures treat each historic bridge as if it were the only one of its type in existence. Completion of a statewide inventory would not aid in avoiding a historic bridge. An inventory could, in some instances, provide information that there are numerous bridges of a particular type and could lead to a conclusion that the bridge under consideration should not be on or eligible for the National Register. These benefits are not, however, a purpose of the programmatic Section 4(f). While the FHWA could withhold applicability of the programmatic Section 4(f) from States which have not completed a bridge inventory, such a requirement would not be responsible public policy.

Some commentors felt that mitigation measures were not clearly defined and that there was no commitment to identify and implement such measures. The section which deals with measures to minimize harm has been revised to clearly identify and require appropriate mitigation. The revised section now states that where bridges are to be replaced the existing bridge must be made available for an alternative use where a responsible party agrees to maintain and preserve the bridge. Making an existing bridge available for alternative use does not necessarily obligate either the FHWA or an SHA to fund the relocation of such a structure. For bridges that are to be rehabilitated, the historic integrity of the bridge must be preserved to the greatest extent possible consistent with unavoidable project requirements, such as safety, load requirements, and design standards. Further, the FHWA must ensure that where the historic integrity of a bridge is damaged, records are made of the bridge in accordance with the Historic American Engineering Record (HAER) standards or other suitable means agreed upon in negotiations during the Section 106 process. This section has been revised to clarify that not only are the Section 106 procedures applied to each bridge, but the programmatic Section 4(f) may *not* be used unless the FHWA, the SHPO, and the ACHP reach agreement during the Section 106 process. The use of the programmatic Section 4(f) evaluation requires the FHWA to consult with the SHPO and the ACHP to reach an agreement on the mitigation measures that will be employed on the project. Other groups, such as a local or State historical society, may also be consulted if their participation could be helpful in reaching an agreement. It is the FHWA's responsibility to ensure that this consultation process is carried out. If no agreement can be reached, then the programmatic Section 4(f) evaluation cannot be applied to the project in question and that project will have to be treated individually under Section 4(f). Since mitigation measures to minimize harm to a historic bridge can include a wide range of strategies that do not require demolition of the historic bridge, no attempt was made to make an all-inclusive list of possible strategies. Only general categories have been provided as a guide to decisionmakers. By using general categories, the parties involved in the consultation process are provided more flexibility in arriving at project-specific mitigation measures.

One commentor indicated that there is a recurring problem of interpreting what is the meaning of "use" of a historic property. For the purpose of this Section 4(f) evaluation, a proposed action will "use" a bridge that is on or eligible for inclusion on the National Register when the action will result in demolition of the bridge or when the historic integrity of the bridge will be impaired. Rehabilitation that does not impair the historic integrity of the bridge is not subject to Section 4(f). The use section of the Section 4(f) evaluation has been modified to clarify this point.

Several comments were received suggesting that the Section 4(f) statute be revised to exclude coverage of historic bridges and historic sites. While such changes to the statute might be considered by some to be desirable, the issue is not relevant to the application of the programmatic document.

One commentor suggested that bridge sufficiency ratings will be used to encourage demolition of historic bridges. Sufficiency ratings are used to determine whether or not a specific bridge is eligible for rehabilitation or replacement. For all bridges, including historic bridges, such ratings merely identify potential problems, but do not require that a deficient or historic bridge be demolished.

One commentor questioned the legality of using a programmatic approach to fulfill Section 4(f) responsibilities. The FHWA Office of the Chief Counsel has reviewed this programmatic Section 4(f) evaluation

and has concluded that such an approach complies with statutory requirements. The language of Section 4(f) expressly contemplates consultation on and approval of programs as well as projects. Further, this programmatic Section 4(f) evaluation is possible because, in the vast majority of cases, the alternatives available in the upgrading or replacement of a deficient historic bridge are limited and predictable. This evaluation identifies those alternatives in advance and provides direction to FHWA officials on actions to be taken with respect to a particular bridge based upon a site-specific assessment of available alternatives. Long experience shows that mitigation opportunities are fully identified in the course of the consultation process required by the NHPA and are usually limited to relatively few categories. This evaluation applies only where the facts involved in a particular bridge project fit the programmatic determination made here. Where other alternatives are identified, where agreement on proper mitigation cannot be reached, or where it is otherwise inappropriate, this evaluation cannot be used, and the FHWA will prepare an individual Section 4(f) evaluation for the bridge.

Comments from several sources indicate that there seems to be some confusion about the intent of this programmatic Section 4(f) and about how it is to be used. This document is not intended to weaken the protection afforded historic bridges, but rather to streamline the documentation requirements where historic bridges are affected. The first step in the process once eligibility to the National Register has been determined is for the FHWA to conduct sufficent studies to ascertain if there is a feasible and prudent alternative that avoids the "use" of the historic structure. All reasonable avoidance alternatives must be clearly proven to exist for each of the avoidance alternatives and must be documented by the FHWA. Only then can the FHWA, by using this programmatic evaluation, consider mitigation measures in consultation with the SHPO and the ACHP. Once agreement on mitigation has been reached, the FHWA must also ensure that mitigation measures agreed to are carried out.

One commentor questioned why National Historic Landmarks were excluded from coverage under the programmatic Section 4(f) evaluation. National Historic Landmarks were excluded because FHWA believes that such properties are examples of the highest level of national significance and importance and that Congress, in amending the NHPA, had accorded such properties special recognition. While the programmatic Section 4(f) makes every effort to protect all historic bridges on or eligible for the National Register, the FHWA believes that it is appropriate to administer projects involved with National Historic Landmarks with a greater amount of external input on a project-by-project basis. Therefore, these projects will continue to be individually processed under Section 4(f) procedures.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: August 2, 1983.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

Department of Transportation, Federal Highway Administration—Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges

This statement sets forth the basis for a programmatic Section 4(f) approval that there are no feasible and prudent alternatives to the use of certain historic bridge structures to be replaced or rehabilitated with Federal funds and that the projects include all possible planning to minimize harm resulting from such use. This approval is made pursuant to Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1968, 23 U.S.C. 138

Use

The historic bridges covered by this programmatic Section 4(f) evaluation are unique because they are historic, yet also part of either a Federal-aid highway system or a State or local highway system that has continued to evolve over the years. Even though these structures are on or eligible for inclusion on the National Register of Historic Places, they must perform as an integral part of a modern transportation system. When they do not or cannot, they must be rehabilitated or replaced in order to assure public safety while maintaining system continuity and integrity. For the purpose of this programmatic Section 4(f) evaluation, a proposed action will "use" a bridge that is on or eligible for inclusion on the National Register of Historic Places when the action will impair the historic integrity of the bridge either by rehabilitation or demolition. Rehabilitation that does not impair the historic integrity of the bridge as determined by procedures implementing the National Historic Preservation Act of 1966, as amended (NHPA), is not subject to Section 4(f).

Applicability

This programmatic Section 4(f) evaluation may be applied by the Federal Highway Administration (FHWA) to projects which meet the following criteria:

1. The bridge is to be replaced or rehabilitated with Federal funds.

2. The project will require the use of a historic bridge structure which is on or is eligible for listing on the National Register of Historic Places.

3. The bridge is not a National Historic Landmark.

4. The FHWA Division Administrator determines that the facts of the project match those set forth in the sections of this document labeled Alternatives, Findings, and Mitigation.

5. Agreement among the FHWA, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) has been reached through procedures pursuant to Section 106 of the NHPA.

Alternatives

The following alternatives avoid any use of the historic bridge:

1. Do nothing.

2. Build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing the NHPA.

3. Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by procedures implementing the NHPA.

This list is intended to be all-inclusive. The programmatic Section 4(f) evaluation does not apply if a reasonable alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated and it must further demonstrate that all applicability criteria listed above were met before the FHWA Division Administrator concluded that the programmatic Section 4(f) evaluation applied to the project.

Findings

In order for this programmatic Section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. *Do Nothing.* The do nothing alternative has been studied. The do nothing alternative ignores the basic transportation need. For the following reasons this alternative is not feasible and prudent:

a. Maintenance—The do nothing alternative does not correct the situation that causes the bridge to be considered structurally deficient or deteriorated. These deficiencies can lead to sudden collapse and potential injury or loss of life. Normal maintenance is not considered adequate to cope with the situation.

b. Safety—The do nothing alternative does not correct the situation that causes the bridge to be considered deficient. Because of these deficiencies, the bridge poses serious and unacceptable safety hazards to the traveling public or places intolerable restriction on transport and travel.

2. *Build on new Location Without Using the Old Bridge.* Investigations have been conducted to construct a bridge on a new location or parallel to the old bridge (allowing for a one-way couplet), but, for one or more of the following reasons, this alternative is not feasible and prudent:

a. Terrain—The present bridge structure has already been located at the only feasible and prudent site, i.e., a gap in the land form, the narrowest point of the river canyon, etc. To build a new bridge at another site will result in extraordinary bridge and approach engineering and construction difficulty or costs or extraordinary disruption to established traffic patterns.

b. Adverse Social, Economic, or Environmental Effects—Building a new bridge away from the present site would result in social, economic, or environmental impact of extraordinary magnitude. Such impacts as extensive severing of productive farmlands, displacement of a significant number of families or businesses, serious disruption of established travel patterns, and access and damage to wetlands may individually or cumulatively weigh heavily against relocation to a new site.

c. Engineering and Economy—Where difficulty associated with the new location is less extreme than those encountered above, a new site would not be feasible and prudent where cost and engineering difficulties reach extraordinary magnitude. Factors supporting this conclusion include significantly increased roadway and structure costs, serious foundation problems, or extreme difficulty in reaching the new site with construction equipment. Additional design and safety factors to be considered include an ability to achieve minimum design standards or to meet requirements of various permitting agencies such as those involved with navigation, pollution, and the environment.

d. Preservation of Old Bridge—It is not feasible and prudent to preserve the existing bridge, even if a new bridge were to be built at a new location. This could occur when the historic bridge is beyond rehabilitation for a transportation or an alternative use, when no responsible party can be located to maintain and preserve the bridge, or when a permitting authority, such as the Coast Guard requires removal or demolition of the old bridge.

3. *Rehabilitation Without Affecting the Historic Integrity of the Bridge.* Studies have been conducted of rehabilitation measures, but, for one or more of the following reasons, this alternative is not feasible and prudent:

a. The bridge is so structurally deficient that it cannot be rehabilitated to meet minimum acceptable load requirements without affecting the historic integrity of the bridge.

b. The bridge is seriously deficient geometrically and cannot be widened to meet the minimum required capacity of the highway system on which it is located without affecting the historic integrity of the bridge. Flexibility in the application of the American Association of State Highway and Transportation Officials geometric standards should be exercised as permitted in 23 CFR Part 625 during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evalution, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when:

1. For bridges that are to be rehabilitated, the historic integrity of the bridge is preserved, to the greatest extent possible, consistent with unavoidable transportation needs, safety, and load requirements;

2. For bridges that are to be rehabilitated to the point that the historic integrity is affected or that are to be moved or demolished, the FHWA ensures that, in accordance with the Historic American Engineering Record (HAER) standards, or other suitable means developed through consultation, fully adequate records are made of the bridge;

3. For bridges that are to be replaced, the existing bridge is made available for an alternative use, provided a responsible party agrees to maintain and preserve the bridge; and

4. For bridges that are adversely affected, agreement among the SHPO, ACHP, and FHWA is reached through the Section 106 process of the NHPA on measures to minimize harm and those measures are incorporated into the project. This programmatic Section 4(f) evaluation does not apply to projects where such an agreement cannot be reached.

Procedures

This programmatic Section 4(f) evaluation applies only when the FHWA Division Adminstrator:

1. Determines that the project meets the applicability criteria set forth above;

2. Determines that all of the alternatives set forth in the Findings section have been fully evaluated;

3. Determines that use of the findings in this document that there are no feasible and prudent alternatives to the use of the historic bridge is clearly applicable;

4. Determines that the project complies with the Measures to Minimize Harm section of this document;

5. Assures that implementation of the measures to minimize harm is completed; and

6. Documents the project file that the programmatic Section 4(f) evaluation applies to the project on which it is to be used.

Coordination

Pursuant to Section 4(f), this statement has been coordinated with the Departments of the Interior, Agriculture, and Housing and Urban Development.

Issued on: July 5, 1983.

Ali F. Sevin,

Director, Office of Environmental Policy, Federal Highway Administration.

[FR Doc. 83-22946 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S-738]

Delta Steamship Lines, Inc.; Application

Notice is hereby given that Delta Steamship Lines, Inc. (Delta), a wholly owned subsidiary of Crowley Maritime International, Inc. (CMI), a Delaware corporation and subsidiary of Crowley Maritime Corporation, has filed an application dated August 15, 1983 requesting a negotiated settlement and early termination of the Operating-Differential Subsidy Agreements (ODSAs), Contract Nos. MA/MSB-425

and MA/MSB-353, beween Delta and the United States, which are presently scheduled to terminate on December 31, 1995 and December 31, 1997 respectively. Pursuant to its ODSAs, Delta provides subsidized services between the United States and South America on Trade Routes 2, 4, 20 and 23-24-25, and the West Coast of Africa on Trade Route 14-2.

Delta proposes that the Maritime Subsidy Board agree to pay Delta $525 million in six payments over a five year period of time in settlement of the Government's long-term obligations under Delta's ODSAs and to terminate the ODSAs upon execution of a settlement agreement. Delta would agree to use $35 million of the funds to cover payments required to ease labor's transition to high productivity ships and the remaining $490 million would be used to acquire ten new diesel-propelled dry cargo containerships, with a capacity of 1000 to 1600 TEU's each, and related equipment, including containers; to reconstruct or otherwise obtain adequate container terminal facilities; and to cover losses incurred from unsubsidized operations during the transition period. Alternatively, and in the event the Board determines that the public interest would be served by a smaller vessel replacement program, Delta proposes that the Board pay Delta $325 million, plus $35 million for labor payments, in exchange for Delta's acquisition of only five new containerships and related equipment. Delta would agree to document its new containerships under the U.S.-flag and to operate them with U.S. labor, for the duration of the vessels' statutory lives. Delta would further agree to provide minimum service levels between the United Sttaes and South America and Africa.

The application may be inspected during normal business hours in the Office of the Secretary, Maritime Subsidy Board/Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Interested parties who desire to comment on Delta's application may submit their views thereon to the Secretary, Maritime Subsidy Board, in triplicate, on or before 5:00 p.m. on September 12, 1983. Any request for a hearing shall specify the issues for such hearing. All timely responses will be considered in MARAD's evaluation of Delta's application. MARAD will take such action as may be deemed appropriate with respect thereto, which may or may not include a hearing.

(Catalog of Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS))

By Order of the Maritime Subsidy Board/ Maritime Administration.

Dated: August 17, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-23024 Filed 8-19-83; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Performance Review Board; Amendment of Composition of Membership

By notice published in the **Federal Register** on August 2, 1983, Volume 48 FR 35059, the Office of the Secretary, Department of the Treasury, announced the appointment of members of the Performance Review Board in accordance with 5 U.S.C. 4314(c)(4). This notice amends the composition of the Board by adding the following member:

George N. Carlson, Deputy Director, International Taxation Division

This notice further amends the composition of the Board by deleting the following members:

David S. Burckman, Director of Personnel
J. Gregory Ballentine, Deputy Assistant Secretary (Tax Analysis)

Cora P. Beebe,

Assistant Secretary (Administration).

[FR Doc. 83-23011 Filed 8-19-83; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

On August 17, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

U.S. Customs Service

OMB Number: 1515-0091
Form Number: None
Type of Review: Extension
Title: Importer of Merchandise Subject to Actual Use Provisions
OMB Number: 1515-0088
Form Number: None
Type of Review: Extension
Title: Foreign Assembler's Declaration with Importer's Endorsement
OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: August 17, 1983.

Rita A. DeNagy,

Departmental Reports, Management Office.

[FR Doc. 83-22944 Filed 8-19-83; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Privacy Act of 1974; Routine Uses

Correction

In FR Doc. 83-22120 beginning on page 36722 in the issue of Friday, August 12, 1983, make the following corrections:

1. On page 36722, the middle column, the third paragraph, the tenth line, the first word should read "information".

2. In the same column, the fifth paragraph, the second line, the word "debtor" should read "Debtor".

3. On page 36724, the middle column, the second complete paragraph, the first line, the word "Additional" should read "additional".

4. On page 36725, the third column, under the "ROUTINE USES" section, the second sentence should read: "The information in this system of records is also routinely used for effecting inter-agency salary and administrative offset for claims of the Department."

5. In the next sentence, the word "users" should read "Users".

6. On page 36726, in the middle column, the fourth bold-faced heading should read "SAFEGUARDS".

7. On the same page, in the third column, under the heading "RECORD ACCESS PROCEDURES", in the second paragraph, the nineteenth line, "i.e." should read "eg."

8. On page 36727, in the middle column, the sixth line from the bottom, the word "President" should read "Present".

9. On page 36728, in the first column, the twenty-fifth line, the word "without" should read "with".

10. On page 36729, the middle column, the fourteenth line, the word "notification" should read "Notification".

BILLING CODE 1505-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of an Intergovernmental Policy Advisory Committee

The U.S. Trade Representative has taken steps to establish an Intergovernmental Policy Advisory Committee on Trade. This Committee will be chartered pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 9(a)(2)). The charter of this Committee will be filed 15 days from the date of this notice.

The Committee will advise, consult with, and make recommendations to the U.S. Trade Representative and relevant Cabinet agencies on policy issues including, but not limited to, statutes and/or regulations enacted or promulgated by state and local governments that may affect U.S. trade policy objectives, as well as statutes, regulations, and other acts promulgated or enacted by the federal government that may affect the relationship between international trade and state and local governments.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Individuals wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Room 123, Washington, D.C. 20506, (202) 395–6120.

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 83-23022 Filed 8-19-83; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 163
Monday, August 22, 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).

CONTENTS

	Items
Consumer Product Safety Commission	1
Federal Mine Safety and Health Review Commission	2
Federal Reserve System	3, 4
International Trade Commission	5
Nuclear Regulatory Commission	6
Parole Commission	7

1

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 10 a.m., Wesnesday, August 24, 1983.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. *Status Report on the Emerging Chemical Hazards Project*
The staff will brief the Commission on the results of evaluations by the Chemical Screening Committee during the past year and nine months of chemicals suspected of having adverse chronic health effects.

Closed to the Public:

2. *Compliance Status Report*
The staff will brief the Commission on the status of various compliance matters.
3. *Enforcement Matter*
The staff will brief the Commission on Enforcement Matter OS #5580.

For a recorded message containing the latest agenda information: call 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207; 301-492-6800.

[S-1200-83 Filed 8-19-83; 11:16 pm]
BILLING CODE 6355-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 17, 1983.

TIME AND DATE: 10 a.m., Wednesday, August 24, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Patrick J. Mooney v. Sohio Western Mining Co., Docket No. CENT 81-157-DM. (Issues include whether the Administrative Law Judge properly concluded that the operator did not violate the Mine Act in discharging the miner.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1196-83 Filed 8-18-83; 2:14 pm]
BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Thursday, August 25, 1983.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed final amendments to Regulation L (Management Official Interlocks) to implement the Depository Institution Management Interlocks Act. (Proposed earlier for public comment; Docket No. R-0431.)

2. Proposed amendments to Regulation O (Loans to Executive Officers, Directors and Principal Shareholders to implement the Garn-St Germain Depository Institutions Act of 1982. (Proposed earlier for public comment; Docket No. R-0469.)

Discussion Agenda:

3. Proposed expansion of the Automated Clearing House (ACH) night cycle.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 17, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. S-1193-83 Filed 8-17-83; 4:50 pm]
BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: Approximately 10:30 a.m., Thursday, August 25, 1983, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding employee separation procedures.
2. Issues relating to Federal Reserve notes.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: August 17, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1192-83 Filed 8-17-83; 4:54 pm]
BILLING CODE 6210-01-M

5

INTERNATIONAL TRADE COMMISSION.

[USTIC SE-83-38]

TIME AND DATE: 4 p.m., Thursday, September 1, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
a. Certain cardiac pacemakers and components thereof (Docket No. 961).
b. Certain nutating valve actuators and components thereof (Docket No. 962).

5. Investigation 731–TA–139 [Preliminary] (Acrylic Sheet from Taiwan)—breifing and vote.

6. Investigation 701–TA–202 [Preliminary] (Cotton Shop Towels from Pakistan)—briefing and vote.

7. Any items left over form previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Mr. Kenneth R. Mason, Secretary (202) 523–0161.

[S–1194–83 Filed 8–18–83; 12:00 pm]

BILLING CODE 7020–02–M

6

NUCLEAR REGULATORY COMMISSION

DATE: week of August 15, 1983 (revised) and Week of August 22, 1983.

PLACE: Commissioner's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open. *Friday, August 19:*

3:30 p.m.:
Affirmation/Discussion and Vote (Public Meeting):
a. Motion for Reconsideration of Indian Point Decision (*cancelled*)
b. Yakima Petition for Rulemaking on Commission Concurrence in DOE Repository Siting Guidelines (*postponed*)
c. Certification to Commission from Byron Licensing Board
d. Intervenors' Motion to Delay Ruling on Zimmer ALAB

Wednesday, August 24:

9:30 a.m.:
Briefing on BWR Pipe Cracking (Public Meeting)
11:50 a.m.:
Affirmation/Discussion and Vote (Public Meeting):
a. Yakima Petition for Rulemaking on Commission Concurrence in DOE Repository Siting Guidelines
b. Draft Order ALAB–698 (TMI Restart Emergency Planning)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

August 17, 1983.

Walter Magee,

Office of the Secretary.

[S–1199–83 Filed 8–18–83; 3:31 pm]

BILLING CODE 7590–01–M

7

PAROLE COMMISSION

[2PO401]

TIME AND DATE: 1 p.m.–2:30 p.m., Tuesday, August 23, 1983.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, and over a conference telephone circuit.

STATUS: *Open* Agency business required this meeting to be held at the above date and time without the opportunity to give one week's notice prior to the meeting. Public announcement shall be made at the earliest practicable time.

MATTERS TO BE CONSIDERED:

1. Consideration of a proposed budget request submitted by the Chairman for Fiscal Year 1985.

2. Consideration of a supplemental budget request for Fiscal Year 1984.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth A. Clark, Budget Officer, U.S. Parole Commission (301) 492–5974.

[S–1198–83 Filed 8–18–83; 3:10 pm]

BILLING CODE 4410–01–M

federal register

Monday
August 22, 1983

Part II

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Hospice Care; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 408, 409, 418, 420, 421, and 489

Medicare Program; Hospice Care

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations would implement section 122 of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, that provides coverage for hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The regulations would establish eligibility requirements, covered services, reimbursement procedures, and the conditions a hospice must meet to be approved for participation in the Medicare program.

DATES: To assure consideration, comments must be received by September 21, 1983.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Rm. 132 East High Rise, Attention: BPP-241-P, 6325 Security Boulevard, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for HCFA.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Coverage and Eligibility: Thomas Hoyer, (301) 594-9446.

Conditions of Participation: Samuel Kidder, (301) 597-5909.

Reimbursement: Bernard Truffer, (301) 597-1369.

SUPPLEMENTARY INFORMATION:

I. Background

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in focus from curative care to palliative care.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption in normal activities while remaining in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other care-givers with the goal of making the individual as physically and emotionaly comfortable as possible.

The hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home in order to enable the terminally ill individual to remain at home in the company of family and friends as long as possible. Inpatient hospice settings have been used primarily when there is no one in the individual's home to assist in his or her care, when the individual's pain and symptoms must be closely monitored in order to be controlled, or when the family needs a rest from the tedium and stress involved in caring for the individual (respite care).

Hospice care originated in Europe and has appeared in the United States only in the last ten years. A Joint Commission on Accreditation of Hospitals (JCAH) survey has identified more than 1200 organizations that consider themselves hospices in the United States. Coverage of hospice care as a separate mode of treatment was not included in the original Medicare legislation; however, many components of hospice care are covered by Medicare when furnished by a Medicare provider. For example, Medicare pays for home health services including various therapy services, the use of medical appliances and durable medical equipment; inpatient hospital services; and physician services. It does not pay for outpatient drugs or custodial care.

Because interest in the hospice movement has grown so rapidly, we began a demonstration project in October 1980 to study the feasibility of including hospice care as a Medicare benefit. The project has been funded for two years and has involved 26 demonstration hospice programs. We have used preliminary cost data from the demonstrations in developing the reimbursement methodology contained in this regulation.

As part of the Tax Equity and Fiscal Responsibility Act of 1982, Congress authorized hospice care as a new Medicare benefit

II. Legislative Amendments

Section 122 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97-248, enacted on September 3, 1982) expanded the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries. Since Congress enacted this benefit with a "sunset" provision, the hospice benefit will be available only from November 1, 1983 through September 30, 1986 absent further legislation by Congress.

The principal changes enacted by section 122 of TEFRA that provide for hospice care are contained in sections 1812 (a)(4) and (d), 1813(a)(4), 1814 (a)(8) and (i), 1816(e)(5) and 1861(dd) of the Social Security Act (Act). Specific provisions of section 122 of TEFRA are described in Section III, Provisions of the Regulations.

III. Provisions of the Regulations

The law requires that we publish regulations to implement the hospice benefit by September 1, 1983, to meet this requirement, we plan to amend 42 CFR Chapter IV by revising Parts 400, 405, 408, 409, 420, 421, and 489 and by adding a new Part 418, Hospice Care. We would also make technical corrections to Parts 405, 421 and 489.

We would amend 42 CFR Part 409 at § 409.5 to include hospice care as a covered benefit under Medicare Part A in accordance with section 1812 of the Act. We would also make conforming changes to 42 CFR Parts 400, 408 and 420. Other revisions to Parts 405 and 421 and the provisions of the new Part 418 are discussed below. The discussions are arranged by topics and include the following: eligibility for hospice care, election and duration of the hospice benefit, hospice conditions of participation, covered services, hospice certification and provider agreements, reimbursement, beneficiary coinsurance, and designation of intermediaries.

A. Eligibility

The provisions specifying the requirements an individual must meet to be eligible to receive Medicare coverage of hospice care would be located in the new Part 418 of 42 CFR, within "Subpart B—Eligibility, Election and Duration of Benefits."

The regulations would use and define certain terms in accordance with section 1861(dd) of the Act. The proposed regulations define the term "terminally

ill" as having a medical prognosis that life expectancy is 6 months or less. The term "attending physician" means the physician who is identified by the individual as having the most significant role in the determination and delivery of medical care to the individual at the time he or she elects to receive hospice care. This physician may, but need not, be employed by the hospice.

The regulations would specify, consistent with the requirements of sections 1812 and 1814(a)(8) of the Act, that to be eligible for Medicare coverage of hospice care, an individual must be entitled to Medicare Part A, and must be certified as terminally ill.

Also in accordance with the Act at section 1812(a)(4), the proposed regulations specify that the hospice care benefit consists of two 90-day periods and one subsequent 30-day period which an individual may use in his or her lifetime. The proposed regulations refer to these periods as "election periods".

The proposed regulations reflect the certification requirements contained in section 1814(a)(8) of the Act. They require that for the first election period of 90 days, the individual be certified as terminally ill by his or her attending physician and by the medical director or physician member of the hospice interdisciplinary group. If the individual has no attending physician and is relying on the hospice to fill the major role in determining and delivering care, the regulations would require only one certification statement. This is consistent with the Congressional intent to help the individual avoid the need to find a second physician for the sole purpose of obtaining a certification statement (House Ways and Means Committee Print, "Explanation of H.R. 6878, The Medicare, Unemployment Compensation, and Public Assistance Amendments of 1982"). This certification would be made no later than 2 calendar days after hospice care is initiated. For the second 90-day or the subsequent 30-day period, the recertification of the terminal illness must be made by the medical director or physician member of the hospice interdisciplinary group.

The certifications and recertifications are statutory requirements for payment, and the regulations would therefore require that the hospice be responsible for obtaining the certification and recertification statements and for retaining them for verification (§ 418.22).

B. Election of the Hospice Benefit: Duration of Benefits

An individual who is eligible for coverage of hospice care is not automatically covered. Section 1812(d)(1) of the Act requires that the individual, in order to receive coverage of hospice care, must elect to receive that care from a particular hospice. In making this election, the individual also waives the right to payment for certain other benefits under Medicare.

To fulfill the requirements of section 1812(d)(1) of the Act, the proposed regulations at 42 CFR 418.24 would require the individual to complete an election form. Because an individual waives certain rights to payment in addition to choosing a palliative mode of treatment when hospice care is elected, we have not included any provision in the proposed regulations that would allow someone else, such as a legal guardian, to make an election on behalf of a beneficiary. We invite public comments on this issue.

The regulations would provide that the election form would be submitted through the hospice from which the individual elects to receive care before any services are provided. The hospice would immediately notify the intermediary so that the hospice could receive payment and the use of non-hospice services could be monitored by intermediaries and carriers. The individual would specify on the election form the date that the election period is to be effective. This date may be the first day of hospice care or any subsequent day of hospice care. The regulations would specify that an individual may not designate an effective date that is retroactive because a retroactive effective date would circumvent the required waiver of certain other Medicare benefits.

In accordance with section 1812(a)(4) of the Act, the regulations would specify that the two 90-day election periods must be used before the 30-day period. We anticipate that most individuals will use the election periods consecutively, that is, when one election period ends, the next will start immediately without a break in hospice care. Rather than require individuals to file an election form at the beginning of each election period, when an individual continues to receive hospice care, we would consider that the individual has elected to use election periods consecutively (without a break in hospice care). To end any election period and thus resume Medicare benefits waived, the individual must revoke the election of hospice care as described below.

The election form would need to indicate the individual's awareness that he or she is terminally ill. The individual's election would also constitute a waiver of certain other Medicare benefits. Section 1812(d)(2) of the Act provides that an individual, upon making an election to receive hospice coverage, would be deemed to have waived payments for certain other benefits except in "exceptional and unusual circumstances as the Secretary may provide." We have not specified any "exceptional or unusual circumstances" in the proposed regulations because we do not yet know of specific types of circumstances that may warrant the use of this exception. Comments on this point are invited.

To assure that an individual who elects to receive hospice care is aware of the benefits that the Act requires him or her to waive, the regulations would provide that the election form indicate the patient's understanding of the services to be waived. These services are:

- Hospice care provided by another hospice program (other than under arrangements made by the particular hospice program from which the individual elected to receive care).
- Any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or that are equivalent to hospice care. (Payment is not waived for services provided by the designated hospice or by another hospice under arrangements made by the designated hospice. In addition, payment is not waived for services provided by the individual's attending physician if that physician is not an employee of the hospice or receiving compensation from the hospice for those services (§418.24).)

Section 1812(d)(2) of the Act authorizes the Secretary to establish guidelines to stipulate what services are waived that are related to the treatment of terminal illness or are the equivalent of hospice care. We have not enumerated in this proposed rule the specific services that we consider related or equivalent to hospice care. We have not attmepted to enumerate the conditions for which care outside the hospice would be covered generally under Medicare because we recognize that there are many illnesses which may occur when an individual is terminally ill which are brought on by the underlying condition of the patient. For example, it is not unusual for a terminally ill patient to develop pneumonia or some other illness as a result of his or her weakened condition. Treatment of such illnesses is considered a hospice service and payment under other Medicare benefits is waived by the hospice election. There are also many services and procedures which may be used in curative treatment that may also be used for the

palliation of pain and symptom management. We expect that the hospice interdisciplinary group will reasonably determine the service that the individual requires for palliation and management of his or her symptoms.

To the extent that individuals seek and receive services outside the hospice program, Medicare coverage is determined by whether or not the services are for the treatment of a condition completely unrelated to the individual's terminal condition. As in the case of hospice services discussed above, we believe that this is a medical judgment which must be made on a case by case basis. Accordingly, Medicare fiscal intermediaries and carriers would make determinations in each case as to whether the services received are covered or are among the services waived through the hospice election. HCFA may issue guidelines from time to time as experience warrants.

As provided insection 1812(d)(2)(B) of the Act, the proposed regulations would permit an individual to revoke his or her election to receive hospice care at any time during an election period (§ 418.28). After revoking the election, the individual would no longer be entitled to coverage of hospice care for any days remaining in that period, and Medicare coverage would resume for those Medicare benefits previously waived. At any time after the revocation, the individual may elect to receive hospice care for a subsequent election period for which eligibility remains.

The regulations would provide that in order for an individual to revoke his or her election for hospice coverage, the individual would be required to submit a revocation statement to the hospice. This statement would declare the individual's intent to revoke the election and the date the revocation is to be effective.

The individual may not designate an effective date that is retroactive. Selection of a retroactive revocation date would circumvent the required waiver of other benefits.

Pursuant to section 1812(d)(2)(C) of the Act, the regulations would also provide that, once in each election period, an individual may change to another hospice program and the change would not be considered a revocation of the decision to receive hospice care for that particular election period (§ 418.30).

The regulations would provide procedures for the individual to change the designation of the particular hospice from which he or she elects to receive care. The individual would be required to prepare a change of election statement and file it with both hospice. The change of election statement would specify the date that the change is to be effective.

Consistent with section 122(h)(1) of TEFRA, the hospice benefit is available under Medicare only through September 30, 1986. The law also provides that an individual who has an election period in effect "on October 1, 1986" is entitled to continued hospice care coverage after that date for the remainder of that election period and any consecutive period to which the individual would have been entitled. Because the law specifies that the hospice benefit ends "before October 1, 1986", the regulations would provide that the individual who has an election period in effect "on September 30, 1986" is entitled to continued hospice care coverage (§ 418.32).

We recognize that further administrative procedures will need to be developed to enable this benefit to be implemented on a daily basis. There will need to be a mechanism by which the Medicare intermediary can learn that the beneficiary has elected hospice care so that: (1) Payments can be made to the hospice on a current basis, and (2) claims for out-of-hospice services by the beneficiaries can be identified and properly adjudicated. Hospices, too, will need to assure that they receive appropriate payments from intermediaries on a timely basis and that inappropriate payments are avoided. In addition, it will be necessary for the Medicare program to be informed of the beneficiary's most current choice (e.g., election, change, revocation, use of regular Medicare benefits) so that appropriate payments can be made to all providers.

We also recognize that there will be a need for checks and audits to assure that the hospice benefit is being provided and used as was intended by the law. We propose to closely monitor the incidence of hospice elections and revocations in connection with non-hospice Medicare admissions to hospitals to assure that manipulation and coercion do not take place. We also propose to set up a system of monitoring hospice care to assure that the needs of the patients have been met, that the billed-for services have been furnished, and that the other requirements for participation and payment are met.

C. Conditions of Participation

In accordance with section 1861(dd) of the Act, the regulations would define a "hospice" as a public agency or private organization or a part of either that is primarily engaged in providing specified services to terminally ill individuals and that meets certain specified conditions (§§ 418.50–418.100). Specific conditions are described in section 1861(dd) of the Act along with the provision that the Secretary may establish further conditions in the interest of the health and safety of individuals receiving hospice care. The regulations would establish conditions related to the following areas to be set forth in "Subpart C—Conditions of Participation" at 42 CFR Part 418.

1. General Provisions

As required by section 1861(dd)(2)(A), the regulations would specify that a hospice must be primarily engaged in providing the care and services listed in section III.C 3 and 4 of this preamble and bereavement counseling. These services must be available as needed on a 24-hour basis and provided in a manner consistent with accepted standards of practice. Care and services must be provided as necessary for the palliation and management of the terminal illness and related conditions (§ 418.50).

2. Administration

The regulations would specify that a hospice must meet the following conditions to ensure that quality care is provided and that fiscal and other responsibilities under the Medicare program are met.

a. *Governing body.* We would require the hospice to have a governing body that would provide for centralization of authority and responsibility for overall operation of the hospice (§ 418.52).

b. *Medical director.* We would also require the hospice to have a medical director to assume overall responsibility for patient care. This is based on section 1861(dd)(1) of the Act and is in support of sections 1814(a)(8) (A) and (B) of the Act that refer to the medical director's specific responsibilities for the certification of terminal illness and for establishing a plan of care for the individual (§ 418.54).

c. *Professional management.* Section 1861.(dd)(2)(A)(ii)(II) of the Act requires that the hospice must, if it arranges for another entity to furnish services to the hospice's patients, assure continuity of care and maintain professional management and financial responsibility for those services.

The proposed regulations would therefore require a legally binding written agreement between the provider of the services and the hospice. The regulations would specify that the arrangement must provide for continuing the plan of care established by the hospice interdisciplinary group and permit the maintenance of the hospice's medical records (§ 418.56). In addition,

the regulations would specify further requirements that would apply if inpatient care is provided under arrangements.

d. *Plan of care.* The proposed regulations would require that a detailed written plan of care be established and maintained for each individual receiving hospice care. This is in accordance with section 1861(dd)(2)(B)(ii) of the Act and is in support of section 1861(dd)(1), that requires that items and services provided as hospice care to an individual be provided under a plan of care (§ 418.58).

e. *Continuation of care.* We propose a standard of responsibility for the individual's care in accordance with section 1861(dd)(2)(D) of the Act that would specify that a hospice may not discontinue or diminish care provided to an individual because of the individual's inability to pay for that care. This provision would require a hospice to continue to provide care and services to any individual receiving care from the hospice. With respect to those individuals who are Medicare beneficiaries, this provision would require continuation of hospice services even after the individual exhausts the hospice benefits under Medicare as long as the individual continues to desire to receive the services and is terminally ill as defined in § 418.3 of the proposed regulations (§ 418.60).

f. *Informed consent.* We would require a hospice to demonstrate respect for an individual's rights. We believe that this would be achieved by ensuring that every individual has signed an informed consent form that specifies the type of care and services that may be provided as hospice care (§ 418.62). The consent form informs the individual of the hospice's patient care policies and responsibilities. The consent form could be combined with the individual's hospice election.

g. *In-service training.* We would require the hospice to provide an ongoing training program for hospice employees that is structured to ensure the quality of care (§ 418.64).

h. *Quality assurance.* We would also require a hospice to evaluate, on an ongoing basis, the quality of care provided. We believe that this evaluation would provide the information necessary for management to identify any problems that might jeopardize the quality of care. We would also require that the hospice correct any problems identified (§ 418.66).

i. *Interdisciplinary group.* We would require, in accordance with section 1861(dd)(2)(B) of the Act, that a hospice have an interdisciplinary group composed of at least a physician, a registered nurse, a social worker and a pastoral or other counselor. This group would be composed of paid hospice employees as well as hospice volunteers as long as the individuals in the group meet the appropriate qualifications. A hospice would need to meet three standards with respect to the interdisciplinary group: one regarding the composition of the group, another regarding the group's responsibilities for provision or supervision of care, and the third regarding the designation of a registered nurse to coordinate the overall plan of care for each patient (§ 418.68). We have specified that the coordinator must be a registered nurse because we believe that an understanding of the medical regimen being provided is essential, and that a registered nurse has the general knowledge required for the coordination of all other services being provided.

j. *Volunteers.* Congress recognized that the use of volunteers is fundamental to the hospice concept. The hospice benefit with the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices. Hospice volunteers offer a range of services from the provision of professional services to helping families with household chores, shopping or transportation. Section 1861(dd)(2)(E) of the Act requires that the hospice use volunteers to provide care and services in accordance with standards set by the Secretary. The statute further requires the maintenance of records on the use of volunteers, and the cost savings and expansion of care achieved through the use of volunteers. We believe that the intent of the law is that the Secretary should develop standards and monitor the level of volunteer activity to identify and forestall substantial diminution in the proportion of volunteer participation. Congressional intent (House Ways and Means Committee Print, "Explanation of H.R. 6878, The Medicare Unemployment Compensation, and Public Assistance Amendments of 1982") indicated that the Secretary would monitor the relationship of total volunteer hours to total enrolled days. We therefore propose standards regarding the role of volunteers; the recruiting, retaining and training of volunteers in order to ensure a continuing level of effort to use volunteers and standards relating to the documentation of volunteer activity (§ 418.70).

In addition, we are proposing a standard requiring hospices to make reasonable efforts to arrange for volunteer clergy and other members of religious organizations in the community to visit patients who desire such visits and to advise patients of this opportunity. Especially in light of the statutory requirement for counseling, we believe that this is an important use of volunteers.

We request that commenters share their experience and ideas on how we might accomplish the intent of the legislative mandate to ensure a continuing level of volunteer effort. Should a national or regional numerical standard be developed that would be applied to each hospice? If so, what measures should be adopted: A ratio of volunteer time to direct care time; a proportion of volunteers to enrolled individuals; a standard requiring a volunteer assigned to each patient; or another mechanism?

k. *Licensure.* As required by section 1861(dd)(2)(F) of the Act, we would require that a hospice be in compliance with applicable State and local licensure laws where they exist. We would also require that hospice employees be licensed, certified or registered in accordance with applicable State laws (§ 418.72).

l. *Central clinical records.* Section 1861(dd)(2)(C) of the Act requires that the hospice be required to maintain central clinical records for each individual receiving hospice care. We propose that a hospice meet standards relating to the content of the records and to protection of the records (§ 418.74).

3. Care Services

In accordance with section 1861(dd)(2)(A)(ii)(I) of the Act, the proposed regulations would require that nursing services, medical social services, physicans' services and counseling be routinely provided directly by hospice employees (§ 418.80). We would also propose conditions for the provision of these services.

Section 1861(dd)(2)(A)(ii)(I) specifies that a hospice "must routinely provide directly substantially all" of the core services. We believe that the distinction in the law and legislative history between those services that must be furnished directly and those that may be furnished under arrangements mandates that we define "directly" to require that services be provided by hospice employees. In a case where a hospice is a separately certified unit of another organization, our definition of "employee" would require that the individual is assigned and works substantially full time for the hospice unit. This requirement ensures that the core services are provided by employees "dedicated" to the hospice but would not preclude them from providing services outside the hospice unit. We

would define "employee" to include volunteers in order to encourage greater use of volunteers. We would allow the use of non-employee staff in situations of peak patient loads or in extraordinary circumstances.

We have also considered how the words "routinely" and "substantially" should be defined and believe that they should be construed to mean that the services provided directly by the hospice should be adequate to meet the needs of the hospice's average patient load. We believe that physician services, to meet this requirement, should be sufficient to meet the general needs of the hospice (e.g., medical director and interdisciplinary group member and general day-to-day, hands-on medical services required by hospice patients). Only physician services of a specialized nature (e.g., radiologists, anesthesiologists, and orthopedic surgeons) would appropriately be obtained under arrangements.

4. Other Services

As specified in section 1861(dd)(2) of the Act, the hospice would be required to provide, either directly or under arrangements, the following services when they are needed: physical therapy, occupational therapy and speech-language pathology; home health aide and homemaker services; medical supplies (including drugs and biologicals for palliation); and short term inpatient care. We would also set conditions for these services to ensure that the hospice maintains responsibility for the care and services provided. Specific provisions of the conditions regarding home health aide services and short term inpatient care are addressed below.

a. *Home health aides.* Section 1861(dd)(1)(D)(i) of the Act requires that a home health aide must have successfully completed a training program approved by the Secretary. Thus, the regulations would specify that a home health aide performing services in hospices must meet the training, attitude and skill requirements already specified in 42 CFR Part 405, "Subpart L—Conditions of Participation: Home Health Agencies" at § 405.1227.

b. *Limitation on short term inpatient care.* As required by section 1861(dd)(2)(A)(iii) of the Act, the regulations would include a condition relating to the use of short term inpatient care (§ 418.98). To participate in Medicare, the hospice would be required to ensure that the total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in any 12-month period during the hospice's participation in the Medicare program did not exceed 20 percent of the total number of days of hospice coverage provided to those beneficiaries. Also, reimbursement to those hospices that exceed this percentage will be limited accordingly. We initially plan to accept as meeting this requirement the hospice's assurance that it will maintain the required ratio of inpatient to home care days. In subsequent surveys, however, evaluations of compliance will be based, to the extent possible, upon data relating to Medicare beneficiaries who have elected the hospice benefit. This condition reflects the statute's requirements governing the provision of *short term* inpatient care and the emphasis on the provision of care primarily in the home.

An exception to this limitation on the total number of inpatient care days is granted, in accordance with section 122(k) of TEFRA, to hospices that began operation before January 1, 1975. The exception would remain in effect until October 1, 1986.

5. Freestanding Hospices Providing Inpatient Care Directly

We would define a freestanding hospice as a hospice that is not part of any other type of participating provider. In order to ensure that basic requirements for the health and safety of its patients are met, we propose to establish standards for freestanding hospices that provide inpatient care directly. For this purpose, we have adopted many of the standards that already exist (at 42 CFR Part 442) for intermediate care facilities (§ 418.100). Freestanding hospices that meet the basic requirements may be approved for Medicare participation with respect to inpatient care under these standards.

D. Covered Services

We would include in the regulations a "Subpart D—Covered Services" at 42 CFR Part 418. In accordance with the statute at section 1861(dd)(1) of the Act, the regulations would list the services covered as hospice care as follows: nursing care; medical social services; physicians' services; counseling services (except for bereavement counseling); short term inpatient care; medical supplies (including drugs and biologicals, as defined in section 1861(t) of the Act, for palliation); services of home health aides and homemakers; and physical therapy, occupational therapy, and speech-language pathology.

The statute at section 1861(dd)(1)(B) of the Act specifically lists "physical or occupational therapy or speech-language pathology" as a covered hospice service. However, we do not believe that Congress, by use of the word "or", intended to limit coverage to only one of those services at a time. We have therefore specified in the proposed regulations that hospice care includes coverage of physical therapy, occupational therapy and speech-language pathology.

The proposed regulations contain concise definitions of the covered services. Under a retrospective, cost-based payment system, more detailed definitions would be necessary to enable us to adjudicate individual claims, which would also need more detail regarding the specific items and services provided. The prospective rates described in this regulation, however, are based on the presumption that services that have been provided are covered. Thus, the need for more detailed coverage rules and the administrative structure to apply them is avoided.

The regulations specify, consistent with section 1862(a) of the Act, that services can only be covered as hospice care if they are reasonable and necessary for the palliation or management of terminal illness (including related conditions). The regulations would also specify that in order for services to be covered as hospice care, the individual must elect coverage of hospice care, the hospice must establish a plan of care that includes the services to be provided, and the hospice must obtain the required physician certification of the terminal illness (§ 418.200). These provisions are consistent with sections 1812(d)(1) and 1814(a)(8) of the Act.

In accordance with section 1861(dd)(1) of the Act, the regulations would provide that nursing care, homemaker services and the services of a home health aide may be furnished on a 24-hour continuous basis during periods of crisis as necessary to maintain the individual at home. The regulations would define a period of crisis as a period in which the individual requires continuous care which is predominantly provided by a licensed nurse. Either home health aide or homemaker services or both may also be provided on a continuing basis. This care must be necessary to achieve palliation or management of acute medical symptoms (§ 418.204(a)).

Respite care, as enumerated insection 1861(dd)(1)(G) and specified in the proposed regulations, is care furnished to an individual in an inpatient setting in order to provide relief to family members or others caring for the individual. The regulations, consistent with the provisions at section 1861(dd)(1)(G) of the Act, would limit

coverage of respite care to periods of five consecutive days (§ 418.204(b)). The law provides and the regulations specify that an exception to the limitation on respite care days would be granted to hospices that began operation before January 1, 1975. This exception would remain in effect until October 1, 1986.

E. Approval of a Hospice Program and Provider Agreements

Section 1864(a) of the Act requires the use of State survey agencies to determine a hospice's compliance with the conditions of participation. We would therefore amend 42 CFR Part 405 at § 405.1901 to include hospices as providers that must be certified in accordance with procedures already established in Part 405, Subpart S, "Certification Procedure for Providers and Suppliers of Services."

Section 1861(dd)(4)(A) of the Act provides that any entity that desires Medicare approval as a hospice and that is already approved as a provider of services (other than a hospice) will be considered to have met any of the requirements for hospice approval that are the same as those for the other provider approval. We do not believe that new regulations are needed to address this provision. As a matter of economic efficiency, State survey agencies already follow this procedure for other types of dually certified providers.

Section 1861(dd)(4)(B) of the Act requires that an entity that is approved as both a hospice and another type of provider must have separate provider agreements under Section 1866 of the Act and must file separate cost reports. We would amend 42 CFR Part 489 at § 489.2 to include hospices as providers that must have an agreement with HCFA in accordance with provisions already established at Part 489, "Provider Agreements Under Medicare".

Under section 1865(a) of the Act, if the Secretary finds that a national accrediting body provides reasonable assurance that the conditions are met, the Secretary may treat an institution accredited by the body as meeting the Medicare conditions. This exception to the usual approval procedure is commonly referred to as extending "deemed status" to the provider.

We are aware that the Joint Commission on Accreditation of Hospitals (JCAH) is developing standards for hospices and plans to initiate a survey effort to determine compliance with those standards. The details of the survey have not been determined. It would be premature to make a decision on deeming hospices accredited by the JCAH or by any other accreditation program until a survey process is begun and we gain experience to assess the efficacy of enforcement. Because of the sunset provision of the hospice benefit, we believe that it may be preferable to use State Medicare surveys so that a more accurate report based upon the specific provisions of the hospice benefit may be given to Congress in the limited time provided.

In accordance with section 1866(b)(4) of the Act, the regulations would specify that if an agreement between the Secretary and a hospice is terminated, there would be no reimbursement for hospice care provided under a plan of care that is established on or after the effective date of termination. If the plan is established for an individual before the effective date of termination, there would be no reimbursement for services provided after the calendar year in which the termination is effective. These provisions would be located in 42 CFR 489.55.

F. Reimbursement

With respect to Medicare reimbursement for hospice care furnished to Medicare beneficiaries, section 1814(i)(1) of the Act provides broad authority for calculating the amount of Medicare reimbursement for hospice care. Specifically, the statute provides that:

> The amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1861(v)(1)(A)) * * *.

This section of the statute provides considerable discretion in designing a reimbursement method for hospice care. The statute also requires that the total Medicare payments made during a reporting period not exceed a "cap" that is based on a percentage of the average amount that Medicare paid for traditional care during the last six months of life for Medicare beneficiaries who died of cancer. Additionally, the statute requires the imposition of copayments on respite care, and on outpatient drugs and biologicals.

Our objective is to design a payment method that provides for efficient operation while minimizing administrative burdens on HCFA and the hospices. We considered, but decided not to propose, a retrospective reasonable cost reimbursement system for Medicare payment of hospice care. This option would have extended to hospices the Medicare reasonable cost reimbursement method generally used for payment to other types of providers. Under this approach, payments would be made on an interim basis as services are provided. At the end of a reporting period, the Medicare intermediary would determine, based on a comprehensive report filed by the hospice of actual cost and utilization, the actual reasonable cost incurred by the hospice for care provided to Medicare patients. The total of interim payments made during the reporting year would be compared to the reasonable cost determined by the intermediary and a final cost settlement would be made.

The major advantage of this approach is that the payment system could be designed generally, based on previous Medicare program experience. There would be no need to develop payment rates immediately, as would be the case with prospective reimbursement. However, neither the short term nor the long term implications of a retrospective cost reimbursement system are desirable. The disadvantages of retrospective cost reimbursement, both in terms of program costs and the incentives given to health care providers are widely recognized. There is a Congressional mandate for HCFA to develop prospective payment systems for various Part A benefits. Medicare patients may well comprise a substantial portion of hospice patients, and a Medicare retrospective reasonable cost reimbursement system would provide a significant disincentive for efficient operations and control of program costs. Finally, retrospective reasonable cost reimbursement also requires substantial administrative effort and cost on the part of both the hospices and HCFA in billing, cost report preparation and review, auditing, and conducting final settlements with each of the participating hospices. For these reasons, we believe that retrospective cost reimbursement is clearly an inappropriate approach.

We also considered and rejected a prepaid capitation approach to hospice reimbursement. Under this approach, ACFA would have calculated a fixed amount which would have been paid for each patient who elected to receive care from a hospice. Under a proposed capitation approach, the rate would be designed to include reimbursement for all care furnished to the patient, and would not vary by the length of the patient's enrollment in the hospice program or with the amount or intensity of services furnished by the hospice.

This approach, similar to the manner in which certain health maintenance organizations (HMOs) are compensated, would provide the maximum incentives for efficiency, since the hospice would be at risk for both utilization and length of stay. Moreover, in terms of administrative ease, capitation is advantageous over more fragmented approaches.

However, there are significant variations in both length of stay and differences in intensity and mix of services furnished to patients among hospices in the Medicare demonstration. These variations relate to both patient characteristics and hospice facility characteristics. In addition, the data would need to be more refined to construct a capitation model. These uncertainties preclude the development of a capitation rate at present. Moreover, we are concerned that because of the charateristics of capitation reimbursement, an incentive would be established for hospices to minimize the services furnished to Medicare patients. This could most easily be achieved by seeking out those patients whose death could be expected to occur in a very short time. Because savings in the hospice program could be expected only if hospice care is a substitute for traditional care, and not an addition to such care, the characteristics of capitation reimbursement would tend to dilute any potential program savings.

1. Proposed Payment Method

We are proposing to use a prospective cost-based payment methodology for hospice care which would permit payment rates to be responsive to both length of stay and intensity and mix of services. Under this proposed methodology, hospices would generally be paid one of several predetermined rates for each day in which a Medicare beneficiary is under the care of the hospice. The rates would vary depending on the level of care furnished to the beneficiary. (See section III F. 2 below.) As proposed, total reimbursement to a hospice for care furnished to a Medicare beneficiary would vary not only by the length of the patient's coverage period in the hospice, but also by the characteristics of the services (with respect to intensity and site) furnished to the beneficiary. The hospice payment amount for each level of care would be determined by HCFA in accordance with the methodology described in section III. F. 3 of this preamble. Our intention in establishing these payment rates is to approximate, as closely as possible, the costs hospices incur in efficiently providing covered hospice care. Thus, the payment amounts represent estimates of the costs hospices will incur in efficiently providing covered care.

Section 1814(i)(1) of the Act specifies that reimbursement for hospice care may not include payment for bereavement counseling and that reimbursement may not be made for counseling services (including nutritional and dietary counseling) as separate services. Thus in calculating the payment rates for hospice care, we would exclude bereavement counseling. We would, however, take into account the cost of providing other counseling services in developing the payment rates for hospice care.

Section 1814(i)(2) of the Act provides for a limit or cap on total Medicare reimbursement to the hospice. Payment would continue to be made to the hospice throughout its reporting period for each day of care furnished; however, the intermediary will monitor payments to assure that total payments do not exceed the statutory cap. The hospice would be required to return to the program any payments that exceed the cap amount. Additional details on the application of this cap are provided in section III. F. 7 of this preamble.

2. Levels of Care

For each day that a Medicare beneficiary is under the care of a hospice, the hospice would be reimbursed an amount applicable to the type and intensity of the services furnished to the beneficiary for that day. For purposes of determining the amount of payment, we propose to establish four basic categories: i.e., routine home care; continuous home care; inpatient respite care; and general inpatient care. A predetermined rate will be established for all of the categories. A brief description of each level of hospice payment is as follows:

a. *Routine Home Care.* We would pay a hospice the routine home care rate for every day a patient is at home and under the care of the hospice (and not receiving continuous home care), regardless of the volume or intensity of the services provided on any given day. We know that there are currently some days when an individual may not require any service as well as some days when several visits may be required. In the home health based demonstration projects, there were approximately .97 visits per day. It could be argued that this payment method creates an incentive for the hospice to underserve patients in order to profit from the fixed daily rates. It has been suggested that this incentive could be eliminated if a system were adopted under which payment is made only on days when services are furnished and which is sensitive to the number and type of services furnished.

We recognize the disadvantage of the method we are proposing and know that there are arguments for the other method of payment. We believe, however, that the demonstration projects (in which hospices were paid on a cost basis and theoretically did not benefit from providing either too many or too few services) have shown that hospice patients require a sufficiently intensive level of home care so that there will be few days upon which services will not be required. Payment of an average rate for every day of routine home care permits the hospice to provide the needed care in the most efficient and convenient method possible without the need to deal with the various coverage and payment rules that would be required if a more detailed and service-oriented payment system were implemented. Conversely, if we adopted a system that made payment contingent upon the frequency and volume with which services were provided, an incentive might be created to provide unnecessary services to obtain income (e.g., to create income to support excess staff in cases where too many nurses or therapists were employed by the hospice).

Although we propose to adopt this policy, we are interested in comments about it and suggestions as to potential alternative policies which may be appropriate to deal with this issue. Comments should particularly address the issues of which unit of payment (per diem or per visit) is preferable and how under a "per visit" method a minimum hospice visit would be defined.

b. *Continuous Home Care.* The hospice would be paid at a continuous home care rate when, in order to maintain the terminally ill patient at home, nursing care is necessary on a continuous basis during periods of crisis. Either home health aide or homemaker services or both may also be provided, but the preponderance of care would need to be nursing care and care would have to be provided for a period of at least 8 hours before home care could be considered to fall within this category. We have established this threshold at 8 hours because the demonstration data indicate that when this type of care is furnished, it rarely occurs for periods of less than this duration.

We do not believe that it would be equitable to pay the hospice at the same rate for 8 hours of services as for 24 hours of services. Thus, we are proposing to divide the continuous home

care rate into three portions. The hospice would be paid a portion of the rate for each period (or partial period) of care provided. That is, the hospice would be paid: one-half of the rate when care is furnished for at least 8 hours and less than 16 hours a day; three fourths of the rate when care is furnished for at least 16 hours and less than 20 hours a day; and eleven-twelfths of the rate when continuous care is provided for 20 or more hours per day.

The continuous home care rate is intended only for periods of crisis where predominantly skilled continuous care is necessary to achieve palliation or management of the patient's acute medical symptoms, and only as necessary to maintain the patient at home.

c. *Inpatient Respite Care.* The hospice would be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care. The inpatient respite rate would apply specifically to situations where the patient's family members or other persons caring for the patient need a short period of relief.

Inpatient respite care may be provided only on an intermittent, nonroutine, and occasional basis and may not be reimbursed for more than 5 days at a time.

Because patients admitted for the type of care described in this section are not in need of care as described in section d., below, we believe that the payment made for the care should reflect the fact that the care could appropriately be purchased in an SNF or ICF rather than in a more expensive setting. Thus we have proposed that the basic rate would be the same regardless of the type of facility in which care in furnished (i.e., freestanding hospice, hospital, SNF or ICF).

The inpatient respite care rate would be paid for the date of admission and for each subsequent inpatient day, except the day on which the patient is discharged. (The hospice would be paid at the appropriate home care rate for the discharge day.) The total payment to a hospice for inpatient respite care is subject to the limitation described in section III.F.5.a. of this preamble.

d. *General Inpatient Care.* Section 1861(dd)(1)(G) of the Act includes as covered hospice care, short-term inpatient care for pain control or management of acute and severe clinical problems which cannot be managed in other settings. Therefore, the hospice would be reimbursed for services furnished when the beneficiary is in an approved inpatient facility for the performance of complicated procedures necessary for pain control or acute or chronic symptom management. For example, payment at the inpatient rate would be made during situations when the patient's condition is such that it is no longer possible to maintain the patient at home. None of the other fixed payment rates (i.e., routine home care) would be applicable for a day on which the patient receives inpatient care. Section III.F.3.d. describes the methodology we propose to use for reimbursement of this care. The total payment to a hospice for inpatient care is subject to the limitation described in section III.F.5.a. of this preamble.

3. Determination of Rates

In general, the proposed prospective payment rates for hospice care have been derived from data obtained from the Medicare hospice demonstration project. In calculating the proposed amounts, we have relied on data concerning the kinds of services furnished by hospices, the cost of such services, and frequency with which such services were furnished to hospice patients. We have also included overhead costs such as maintenance, depreciation, general accounting, capital and other administrative costs in the calculation of the individual service components (for example, nursing or home health services) that compose the payment rates. The demonstration data will ultimately reflect the experience of more than 6,000 Medicare patients who received care from the demonstration hospices during the course of the demonstration.

In proposing these payment amounts, we would point out that the demonstration data have not been finalized and that there are at least two factors which could alter the amount of payment. First, since patient-based data are not entered into the data files until three months after the patient has died, the data do not reflect the experience of all patients who received hospice care during the course of the demonstration. We have, however, received the data from the majority of the patients included in the study and preliminary indications are that the data base will not change significantly as the data from the remaining patients are included in it. Secondly, the cost data used in the proposed rates are calculated from the cost reports from the 26 demonstration hospices. These reports are in the process of being audited to assure that the reported costs are consistent with general Medicare reimbursement principles. In the final regulation, we will include cost data from the audited cost reports, and it is possible that the audit results may affect the cost data. However, the cost reports have already undergone a preliminary audit known as desk-review, and we do not believe that the formal audits will result in substantial changes in the cost data they reflect. The final regulation will, of course, incorporate any changes in the payment amounts which are necessitated by the audit results.

a. *Routine Home Care Rate.* As specified in § 418.302(d)(3) of the proposed regulation, the payment rate for routine home care would be paid to the hospice for each day during which a Medicare beneficiary is under the care of the hospice, and not receiving the care described in the other three categories.

In calculating the rate, we determined from the Medicare hospice demonstration data the types of services furnished by the hospices to Medicare patients on routine home care days, and the daily cost of each of these components. The rate for routine home care is the sum of the average daily cost of each of the service components. The average daily cost of nursing, home health, and social service/therapy services were calculated by the following process:

1. The average cost per visit for each demonstration hospice was calculated for each type of service. We then calculated the mean cost per visit for all hospices.

2. We then calculated the average number of visits for provision of these services received by hospice patients on routine home care days. We divided these figures by the average number of home care days to determine the average number of visits per day for each service type.

3. We multiplied the average cost per visit for each service (item 1) by the appropriate utilization component (item 2) to determine the average cost for each service per patient per day of routine home care.

With respect to the daily cost of drugs, supplies and medical equipment, we calculated the average cost per patient per day by calculating the average cost per patient for these items and dividing by the number of days of care. With respect to drugs, we reduced the daily cost by the applicable coinsurance amount (five percent), as specified in § 418.400(a) of the proposed regulation.

We also added a daily cost factor for the managerial expense of the hospice interdisciplinary group. The daily cost of the interdisciplinary group was calculated by dividing the average cost per patient for the group by the average number of days of hospice stay.

The following chart summarizes the calculation of the routine home care rate.

Service component	Average cost per visit	Average visits per day	Cost per day
Nursing	$61	.34	$20.74
Home Health	35	.46	16.10
Soc. Ser./Therapy	57	.08	4.56
Drugs (reduced 5% to reflect coinsurance			.95
Supplies			3.60
Equipment			.90
Interdisciplinary Group			6.32
			53.17

b. Continuous Home Care Rate. The proposed payment rate for continuous home care was calculated from Medicare hospice demonstration data on the cost of continuous home care. Using these data, we estimated the cost of providing continuous care for a 24-hour period, and divided the daily rate into three smaller intervals for billing purposes, as specified in § 418.302(d)(4) of the regulation. The reimbursement amount for each interval is based on the mean within each interval. While there may be some slight variations in the implied hourly rates at the margins of each bracket (for example, care rendered slightly over 8 hours implies an hourly rate of about $19, while care rendered slightly less than 16 hours implies an hourly rate of about $10), we anticipate a balancing effect. We rejected the alternative of using a flat hourly rate since this would create incentives to provide care longer while further complicating the billing system.

In calculating the daily rate, we multiplied the average hourly cost of continuous home care from the demonstration hospices ($12.12/hour by 24 hours to arrive at a daily cost of such care. To this amount, we added the daily cost of therapy visits, drugs, supplies and equipment, which were calculated specifically from the utilization of these services by demonstration patients who received continuous home care. We also included the average daily cost of the hospice interdisciplinary group.

The following chart shows the calculation of the continuous home care rate.

Service component	Average cost per visit (hours)	Average visits (hours per day)	Cost per day
Continuous care	$12.12	24 hrs.	290.88
Therapy	57.00	.06 visits	3.42
Daily cost of drugs (reduced 5% to reflect coinsurance).			2.00
Daily cost of supplies.			2.83
Daily cost of equipment.			6.51
Interdisciplinary group.			6.32
Continuous home care rate per Day.			311.96
8 up to 16 hour interval (⅓).			155.98
16 up to 20 hour interval (⅚).			233.97
20 through 24 hour interval (1⅓).			285.96

c. *Inpatient Respite Rate.* The proposed rate for inpatient respite care was calculated using Medicare program data on the cost of routine skilled nursing facility (SNF) services. Experience under the hospice demonstration with inpatient respite care was extremely limited. Less than one percent of demonstration patients received care classified as inpatient respite care and use of the data from this small number of patients would be misleading. Since SNF services and even less expensive ICF services are widely available throughout the country, we would anticipate that hospices would have relatively little difficulty arranging for the availability of these services. We do not believe that payment of a separate rate for inpatient respite care furnished in a hospital is desirable because it would provide an incentive to furnish respite care in an unnecessarily costly setting. A hospice may provide inpatient respite care in any approved inpatient setting; however, Medicare payment would not exceed the inpatient respite rate.

We reduced the rate by the applicable coinsurance for inpatient respite care specified in the law and in section 416.400(b) of the regulations.

The rate calculations are as follows:

Service component	Cost per day
1982 mean routine cost per day for SNF	$44.85
Daily cost of supplies, drugs and interdisciplinary group (1981 hospice cost adjusted to 1982 by the medical component of the Consumer Price Index)	11.45
	56.00
Inflation adjustment (medical component of the Consumer Price Index from 6/82 to 4/84	X1.159
Subtotal	64.89
Less 5 percent coinsurance	−3.24
Inpatient Respite Rate	61.65

d. *General Inpatient Care.* As specified in § 418.302 of the proposed regulations, a hospice would be reimbursed for general inpatient care for pain control or acute or chronic symptom management. The cost of these services would be allowable only to the extent that the services are consistent with the plan of care established by the hospice interdisciplinary group.

We propose to establish a single rate to compensate hospices for general inpatient care. We are basing this rate on data collected in the hospice demonstration project for hospital-based hospices furnishing their own inpatient care because these organizations retained control over the care provided in the hospital hospice unit. We feel these costs (with appropriate adjustments) are indicative of the costs other hospices will incur in providing inpatient care in accordance with the statutory requirement that hospices retain professional management responsibility over all hospice care.

We know that much of the hospice-type inpatient care given now takes place in hospitals and virtually all the inpatient care provided in the HCFA demonstration projects took place in hospitals. Interviews with directors of hospices have indicated that hospice inpatient care requires a fairly service, intensive setting and a building that meets basic health and fire safety standards. Many hospices may choose to arrange for care with existing hospitals or skilled nursing facilities. Other hospices may prefer to establish discrete inpatient units on the premises of a hospital or skilled nursing facility or to establish a free-standing inpatient unit. We do not beleive that it is appropriate for us to shape the choices of a new hospice by stipulating the location in which the services are provided or by establishing different rates for different settings, because we believe that these actions could unduly affect the development of hospice inpatient care at a time when the Department cannot judge which of the possible alternative settings is the best. At the same time, we want to provide adequate funding for the level of inpatient services a hospice patient is likely to require so that quality inpatient care is available under the benefit. Finally, we want to establish a payment rate which is in line with the price of the Medicare program has establish for

comparable services under its other benefits.

In order to achieve this result, we have calculated an inpatient rate based on the routine and ancillary costs incurred during the demonstration project for hospital-based hospices. The routine component of this rate is adjusted to reflect national hospice inpatient routine operating costs (including capital). Based upon an examiniation of the regular Medicare cost reports for these hospital-based hospices, we found that, on the average, these hospitals' (non-hospice) routine operating costs exceeded national average routine operating costs by 29 percent. This can be attributed to the fact that most of these hospitals were teaching institutions located in higher cost urban areas. We have inferred that hospice routine operating costs in these same hospitals would also exceed the national average by 29 percent, and have adjusted that data to reflect this. We have added to this hospice routine cost an amount for ancillary costs which was also based on the average daily cost from demonstration data for hospital-based hospices. We then combined these two components (routine and ancillary) into one national hospice inpatient care rate, and updated this figure for inflation. The calculation is as follows:

Hospital based hospices' 1981 routine operating costs per day, from HCFA hospice demonstration (includes general and administrative overhead costs	$221
Ratio of non-hospice routine operating cost for hospice demonstration hospitals to national average routine operating costs	1.29
National hospice inpatient routine operating costs per day (1981)	$171
Hospice demonstration average ancillary cost per day—hospital based hospices (1981)	$45
National inpatient care rate from 1981 demonstration data	$216
1981 to 1984 increase in medical care expenditures—Consumer Price Index	X1.256
General Inpatient Care Rate	$271

A determination of final payment to the hospice for inpatient care will be made in accordance with section III. F. 5. a. of this preamble.

Summary of Payments

In summary, the proposed hospice payment rates are as follows:

1. Routine Home Care—$53.17 per day
2. Continuous Home Care:
   8 up to 16 hours—155.96
   16 up to 20 hours—233.97
   20 through 24 hours—285.96
3. Inpatient Respite Care—61.65 per day
4. General Inpatient Care—271.00 per day

While the prospective home care rates reflect the 1981 cost experience of demonstration hospices, we are not proposing to adjust or index these rates for inflation that will have occurred from 1981 to the date of implementation of hospice reimbursement.

This is due to the fact that we believe the rates are adequate, for the following reasons: The home care rates reflected in the demonstration included some overhead costs, such as data collection, that are not covered under this regulation. Since the hospices were reimbursed for costs and there were no tests of "reasonableness" applied, there were no incentives for efficiency. In addition, some hospices had a low volume of services with resulting higher costs per visit.

We are not proposing any specific mechanism to adjust the prospective rates after we begin to reimburse hospices. We will monitor the cost and utilization experience of participating hospices through the submission of cost reports filed by selected hospices as discussed in section III. F. 9 of this preamble. We intend to examine the payment rates closely and will adjust the rates as this experience dictates. If we revise the payment rates in the future, we will publish our proposals as a notice in the **Federal Register.**

4. Local Adjustment of Payment Rates

We are proposing to use a mechanism for local adjustment of the payment rates to reflect the differences from area to area in wage levels.

The local adjustment is necessary to permit payment of higher rates in areas with relatively high wage levels, and proportionately lower rates in areas with wage levels below the national average. We considered but rejected an approach using the level of Medicare expenditures nationally compared to locally to compute an index to reflect geographical differences in hospice costs. An index based on Medicare expenditures would be necessarily heavily weighted toward institutional costs and physician costs that would not be appropriate for hospices. Because hospice care is relatively labor intensive, we believe that a local adjustment based on wage differences would be more appropriate. This method is used in other areas of the Medicare program to adjust cost limits for regional differences.

To determine the adjustment to the payment rates, we are proposing to use the area wage index which is used by Medicare in establishing limits on hospital, skilled nursing facility and home health agency costs. An example of this index was published on September 30, 1982 (47 FR 43311).

This index relates the wage levels in each Standard Metropolitan Statistical Area (SMSA), New England County Metropolitan Area (NECMA) and rural area within a State to a national norm of 1.0. (This index is calculated based on data compiled by the Bureau of Labor Statistics and is updated annually. We plan to use the most recent index available in adjusting hospice payment rates and will include the latest index as an appendix to the final rule.)

In adjusting the payment rates, we propose to separate the national payment rates into components which reflect the estimated proportion of the rate attributable to wage and non-wage costs. We will adjust the wage component of each rate by the index applicable to the area in which the hospice is located. This procedure is known as weighting. The rate to be paid to a hospice will be the sum of the unadjusted non-wage component and the adjusted wage component. We do not propose to adjust the non-wage component of the rate since it is a relatively small component of the total rate and since no index appropriate for that purpose is available.

With respect to home care rates (routine and continuous), we propose to use the wage/non-wage proportions specified in Medicare's limit on home health agency costs. While it might be possible to develop a separate proportion specific to hospices, we believe that the hospice home care cost distribution should not differ substantially from that of home health agencies, and use of an index based on the cost of the latter is appropriate. However, if experience with hospice costs proves otherwise, we will develop a hospice-specific ratio.

With respect to inpatient respite care costs, we propose to use the wage/non-wage proportions specified in the cost limits on skilled nursing facilities. We believe this to be appropriate since these rates are based on general Medicare costs for these facilities. This approach is consistent with usual Medicare practice. We are proposing to subject only the portion of the general inpatient rates dealing with routine facility cost to the weighting procedure since the wage/non-wage proportion was derived from and applies specifically to the mean SNF cost per day ($51.98 as adjusted for inflation).

The following are the proposed wage/non-wage proportions for the hospice payment rates:

Rate	Wage component (percent)	Non-wage component (percent)
Routine home care	68.71	31.29
Continuous home care	68.71	31.29

Rate	Wage component (percent)	Non-wage component (percent)
Inpatient respite [1]	61.26	38.74
General inpatient care [2]	80.77	19.23

[1] Weighting applicable only to the SNF cost component, updated for inflation.
[2] Weighting applicable to the routine cost component ($214.78) only, after updating for inflation.

In calculating the amount of each rate to be adjusted, we will multiply the national rate by the appropriate proportion from the above table. However, in the case of the inpatient respite rate, this procedure is applied only to the SNF cost component after updating for inflation ($51.98). The other component of the rate is included in the unweighted component.

The following represents the amount (in dollars) of each rate subject to adjustment by the wage index.

	National rate	Wage component subject to index	Unweighted amount
Routine home care	$53.17	$36.53	$16.64
Continuous home care	311.96	214.35	97.61
Inpatient respite	61.65	31.84	29.81
General inpatient care	271.00	173.48	97.52

The following example illustrates how weighting would be accomplished for a hospice located in Baltimore, Maryland (wage index is 1.1352).

	National rate	Wage component subject to index	Index	Adjusted wage component	Non-wage	Adjusted rate
Routnie home care	$53.17	$36.53	1.1352	$41.47	$16.64	$58.11
Continuous home care	311.96	214.35	1.1352	243.33	97.61	340.94
Inpatient respite	61.65	31.84	1.1352	36.14	29.81	65.95
General inpatient care	271.00	173.48	1.1352	196.93	97.52	294.45

5. Limitation on Reimbursement

We are proposing to make payments to a hospice subject to a limitation on the number of days of inpatient care for Medicare patients.

a. Limitation on Maximum Number of Inpatient Care Days. The statute requires that the aggregate number of inpatient days (including general inpatient, and inpatient respite), during any 12 month period not exceed 20 percent of the aggregate number of days of hospice care provided to Medicare beneficiaries during that period. Accordingly, we are proposing a limit on the number of inpatient days for which payment will be made. The limitation will be applied at the end of the hospice "cap period" as described in section III. F. 7. d. of this preamble.

At the end of a "cap period", the limit on the maximum number of inpatient care days will be calculated based on 20 percent of the total number of days that Medicare patients were enrolled in the hospice. Interim payments made to the hospice for inpatient care will be compared to this limit as follows:

1. The maximum allowable number of inpatient days will be calculated by multiplying the total number of days of Medicare hospice care by 0.2.

2. If the total number of days of inpatient care furnished to Medicare hospice patients is less than or equal to the maximum, no adjustment will be necessary.

3. If the total number of days of inpatient care exceeded the maximum allowable number, the limitation will be determined by calculating a ratio of the maximum allowable days to the number of actual days of inpatient care, and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made. Any excess reimbursement will be refunded by the hospice. Overall payments to the hospice will be subject to the cap amount specified in section III.F.7 of this preamble.

b. *Application of Limits.* The limit on the number of inpatient days will be applied by the intermediary at the end of the "cap period", as described in section III.F.7.d. of this preamble. This procedure will be necessary to enable the intermediary to calculate the total payment to the hospice, prior to application of the hospice cap.

6. Adjustment for Physicians Services

With one exception, the basic payment rates for hospice care and payments for inpatient care which are described above are designed to reimburse the hospice for the costs of all covered services related to the treatment of the beneficiary's terminal illness. The data available to us do not enable us to develop an accurate prospective estimation of the cost a hospice incurs for professional services of physicians. However, the statute clearly includes physicians' services as a core service which must be substantially provided directly by the hospice. We have determined that these services cannot be incorporated into any of our models of services for determining the payment rates because they do not occur frequently or uniformly in the care of a typical hospice patient.

We are proposing, therefore, to reimburse the hospice separately (except as outlined below) for physicians' services that are furnished to hospice patients and that are provided by employees of, or under arrangements made by, the hospice.

Administrative and general supervisory activities performed by hospice physicians will not be reimbursed in this manner but will be accounted for in the calculation of the level of care rates. These activities would generally be performed by:

1. A physician acting in the capacity of the physician member of the hospice interdisciplinary group.

2. A physician acting in the capacity of the medical director.

The costs for these services are included in the reimbursement rates for routine home care, continuous home care, and inpatient respite care. The hospice would be paid for all other physicians' services that are furnished to individual patients and that are provided by hospice employees (excluding volunteers) or under arrangements made by the hospice, at 100 percent of the Medicare reasonable charge for the service. The hospice would bill these services to the Medicare carrier servicing the hospice. Total payments made to the hospice for these services would be counted, along with total payments made at the various hospice rates, in determining whether the hospice cap amount has been exceeded.

The services of a beneficiary's attending physician who is not an employee of, or receiving compensation from the hospice for the services provided for the hospice, would continue to be paid through the Medicare carrier at the usual Medicare rate of 80 percent of the reasonable charges. These services would not be counted in determining whether the hospice cap amount has been exceeded. This is because these services of an attending physician are not hospice care.

7. Hospice Cap

Section 1814(i) of the Act imposes an aggregate cap on Medicare payments to any hospice. The law prescribes in detail the method by which this cap will

be computed. Basically, the Secretary is required to determine (for the most recent year for which data are available) the average Medicare costs incurred for cancer patients during the last six months of life. This average cost is then to be updated for inflation using the Medical Care Component of the Consumer Price Index, and also to be adjusted for regional wage differences. The cap amount is set at 40 percent of that regional average figure. The total payment cap for any given hospice is established by multiplying the cap amount by the number of Medicare beneficiaries who received hospice services during the year. Under the law, the cap is an absolute limit on Medicare payments to a hospice. The methodology used to calculate the cap amount is described in further detail below.

Section 122(j) of TEFRA, as redesignated by § 309(a)(6) of the Technical Corrections Act of 1982 (Pub. L. 97–448), allows, and these regulations include, an exception to the application of this cap for hospices that began operation before January 1, 1975. These hospices are exempted from the cap until October 1, 1986, in order to ensure their continued viability.

a. *Base Period.* Section 1814(i)(2)(B)(v) of the Act specifies that, for purposes of determining the hospice reimbursement cap, ". . . the term 'base period' means the most recent period of 12 months (ending before the date proposed regulations are first issued to carry out this paragraph) for which the Secretary determines he has sufficient data to make the determinations required."

In order to calculate the hospice cap amount, we need complete payment data on services furnished to beneficiaries from a number of sources. We must include Medicare reimbursement made for inpatient hospital services, SNF care, home health services, physician services, outpatient hospital services, etc., all of which are generated from separate billing forms. The Medicare program routinely collects and aggregates this type of payment information for all covered services in its "Continuous Medicare History File". These data are gathered for a 5 percent sample of Medicare enrollees. However, this file is only complete through calendar year 1979. Therefore, even though we have more complete payment data for individual elements of Medicare reimbursement, such as physician charge screens or hospital reimbursement, we must use 1979 as the base year for purposes of calculating the hospice cap amount because it is the most recent year for which we have complete payment data for all elements of covered services. We do not believe that the use of 1979 as the base year would adversely affect the cap calculation, however, because the base year data would be adjusted for inflation as described in section III. F.7.d of this preamble.

b. *National Average Medicare Per Capita Expenditure.* Section 1814(i)(2)(B)(i) of the Act provides that the national average Medicare per capita expenditure amount be determined using Medicare records. The statute specifies that the calculation be made by determining (or estimating) the amount of Medicare payments made with respect to services furnished during the 6 months before death to those beneficiaries who died from cancer during the base period. These expenditures are to be divided by the number of beneficiaries identified to determine a national average.

The first step in this process is the identification of beneficiaries who died from cancer in calendar year 1979. HCFA's internal records do not include cause of death information for beneficiaries; however, they do include the principal hospital diagnosis for patients who had at least one hospital stay. From this data we can identify many patients who had a diagnosis of cancer, although the hospital diagnosis and the cause of death would not be the same in all cases. This method would, however, fail to identify those beneficiaries who died from cancer but were not admitted to hospital with this diagnosis. If the cap amount is computed exclusively on the basis of data on patients who have been admitted as inpatients of hospitals, the result could be to bias the national average upward since many beneficiaries who incurred lower costs and died of cancer without having been admitted as inpatients of hospitals would not be included in the calculation. If most cancer patients are hospitalized before death, the bias may not be significant. Nevertheless, we are exploring the possibility of identifying some of these beneficiaries by using an external source of information.

Cause of death information compiled from State death certificates is potentially available from records of the National Center for Health Statistics (NCHS). We are currently exploring the feasibility of obtaining the information from the NCHS. We believe that using NCHS data as a source of additional information does not violate the intent of the statutory provision (section 1814(i)(2)(B)(i) of the Act) which specifies the use of program data.

Once we have identified beneficiaries whose cause of death was cancer and who died in 1979, we will examine our utilization data to estimate the reimbursement for benefits provided to these individuals in the six-month period preceding death. Using these data, HCFA would establish a national average Medicare per capita expenditure for care furnished to these individuals.

c. *Regional Adjustments.* Section 1814(i)(2)(B)(iii) of the Act provides for an adjustment to the national average Medicare per capita expenditure to reflect relative differences between each region's average cost of delivering health care and the national average cost of delivering health care.

Presently, we are reviewing the available data and considering how we could differentiate between regions and index the regional cost of health care to the national average. We believe that the data will suggest natural groupings of cost that will permit us to divide the nation into regions on a State or sub-State basis. If we decide to use this approach, the average health care cost in each region (as determined from our data) would be compared to the national average health care cost to arrive at the regional adjustment.

As an alternative methodology for applying this regional index, we are also considering using the Bureau of Labor Statistics (BLS) wage index. This index reflects the different wage levels throughout the country. Since wages make up a large portion of a hospice's total costs, we believe that this would be a good indicator of the appropriate geographic adjustment factor. Moreover, we have used this index previously in making geographic adjustments in other aspects of the Medicare program; for example, in computing provider costs limits and in determining reimbursement rates for ambulatory surgical centers. If we decide to use the BLS wage index as the adjustment factor, we would define regions as the Standard Metropolitan Statistical Areas (SMSA) and other groups used by the BLS.

We do not intend to make a decision on which method of indexing we will use until late in the summer of 1983, because it will take several months to gather and analyze the data and to determine if they permit a satisfactory means of performing the adjustment. In the interim, we are soliciting public comments on both of these alternatives.

d. *Inflation Adjustment.* To determine the cap amount for each region for each cap year, the regional average Medicare per capita expenditure for that region for the base year (as determined in section c. above) is then adjusted for increases or decreases in medical care

expenditures. Section 1814(i)(2)(B)(iv) of the Act specifies that this adjustment shall reflect the percentage increase or decrease in the medical care expenditure category of the Consumer Price Index (CPI) for all urban consumers (U.S. city average), published by the BLS, for the fourth month of the base year to the fifth month of the accounting year.

While hospices would report cost and utilization data when requested by HCFA in accordance with their individual reporting years (§ 418.310(b) of this proposed regulation), it is not necessary to make the cap calculation specific to each hospice's fiscal reporting year. Rather, since the program will begin on November 1, 1983, we are proposing to calculate the cap for each hospice for a cap period beginning on November 1 and ending October 31. The total payment made for services furnished during this period would be compared to the cap for this period. This procedure should simplify the administration of this provision for both HCFA and the hospices.

Thus, the regional average amount will be adjusted to account for changes in the cost of medical care caused by changes in the economy between the base period and the fifth month (March) of the cap period. The hospice cap would also be adjusted in each subsequent reporting year to account for the economic impact of change in the cost of medical care. However, since the appropriate CPI factor would not be published by November of each year, hospices would not know the exact cap amount at the beginning of each reporting period.

e. *Number of Hospice Beneficiaries.* As specified by section 1814(i) of the Act, each individual hospice's cap amount is equal to 40 percent of the regional average amount, adjusted for inflation or deflation (as determined in accordance with subsections b through d above) multiplied by the number of Medicare patients who elected to receive care from the hospice in the reporting year. We estimate that the average cap amount per beneficiary for the first year of the hospice program will approximate $4232. This estimate was established by strict application of the requirements for determining the cap amount as contained in the legislation. The requirements do not allow discretion in the computation method. We used 1978 data as the basis for this estimate; however, we believe that 1979 data will be available by the time we publish final regulations. If so, we will use those data. The amount of the cap may vary somewhat based on the refinement of the data base that occurs between now and the issuance of final regulations and as a result of using the more recent 1979 data. Based on our experience, however, we do not believe that either of these factors will result in a significant variation in the cap amount per beneficiary, nor do we believe that a significant change in the cap amount could be accomplished without a change in the legislative requirements. (Note: We recognize that the estimated cap amount we have computed is significantly lower than the amount anticipated by the Congress at the time the legislation was passed. While we do not have legal discretion to modify the amount under current law, we understand that attempts are under way legislatively to modify the law and create a higher cap amount.)

The statute specifies that the number of Medicare patients used in the calculation is to be adjusted to reflect the portion of care provided in a previous or subsequent reporting year or in another hospice. With respect to the adjustment necessary to account for situations in which a beneficiary's election overlaps two accounting periods, we are proposing to count each beneficiary only in the reporting year in which the preponderance of the hospice care would be expected to be furnished rather than attempting to perform a proportional adjustment. Although section 1814(i)(2)(C) of the Act specifies that the cap amount is to be adjusted "to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year * * *", such an adjustment would be difficult in that the proportion of the hospice stay occurring in any given year would not be known until the patient died or exhausted his or her hospice benefits. We believe that the proposed alternative of counting the beneficiary in the reporting period where the beneficiary used most of the days of covered hospice care will achieve the intent of the statute without being burdensome.

In determining at what point to include a beneficiary in calculating the hospice cap amount, we used the length of stay data collected through the Medicare hospice demonstration project. We found that the mean number of hospice benefit days during the demonstration equaled 44 days. Therefore, for purposes of calculating the payment cap, we are proposing that the hospice count beneficiaries who have filed an initial election to receive hospice care after October 9, which is less than 22 days before the end of the cap period, in the subsequent year. This figure represents half of the mean length of stay in the demonstration project. This method will produce a reasonable estimate of the proportionate number of beneficiaries to be counted in each cap period.

The cap will be calculated by including 40 percent of the full regional cap amount adjusted for inflation (as determined in section F. 7. d above) times the number of Medicare beneficiaries who:

(1) Have not previously been counted in either another hospice's cap or another reporting year, and

(2) Have filed an election with the hospice during the period beginning after October 8th of the previous year through October 8th of the current year.

Once a beneficiary has been included in the calculation of a hospice cap amount, he or she may not be included in the cap for that hospice again, even if the number of covered days in subsequent reporting period exceeds that of the period where the beneficiary was included. (This could occur when the beneficiary has breaks between periods of election.)

When a beneficiary elects to receive hospice benefits from two different hospices, we are proposing a proportional application of the cap amount. We believe it would be inequitable to count the patient's stay in the hospices as equivalent if there were marked differences in the length of stay in the two periods. Consequently, we propose to calculate the percentage of the patient's length of stay in each hospice relative to the total length of hospice stay. In this way, each hospice would be given credit for the appropriate portion for calculation of the cap amount.

We are aware that this type of apportioning of the benficiary's stay may result in the inclusion of a beneficiary in the calculation of the cap for a reporting period other than the period for which the services were furnished, since it is necessary that the beneficiary die or exhaust his or her benefits before the percentage can be determined. However, we believe that this proposal is the most equitable means of implementing the statutory direction to adjust the cap amount to reflect the proportion of care furnished under a plan of care established by another hospice program. Moreover, we expect that the situation of beneficiaries changing to other hospices would occur infrequently; thus, we do not anticipate that the effect on hospice payments would be significant.

B. Appeals

As stated above, the hospice would be paid at the appropriate rate for each day during a beneficiary"s election period plus 100 percent of the reasonable charge for physician services provided by physicians who are employees of the hospice, subject to the cap amount. A hospice that believes an error has been made in the determination of the amount of Medicare payments may appeal the determination. Since the normal administrative appeals process under section 1878 of the Act applies only to issues related to cost reimbursement, we are creating an appeals procedure that is comparable to the statutory procedure but that is not based on section 1878. For example, the hospice may appeal the intermediarey's determination as to which payment level is applicable for each day, or the intermediary's determination as to whether services provided outside the hospice program are related or unrelated to the terminal illness. The methods and standards for the calculation of the payment rates by HCFA would not be subject to an administrative appeal.

Hospice appeals of the computation of the payment limit or the amount due the hospice may be made when the amount in controversy is $1,000 or more. In this case, the hospice is entitled to a hearing by the intermediary. The hospice would present evidence to indicate that an error has been made in the calculations or that the intermediary did not apply the correct procedures in determining the amount of reimbursement. The hospice would also be permitted to appeal these issues to the Provider Reimbursement Review Board (PRRB) if the amount in controversy is $10,000 or more. The appeals process is set forth in 42 CFR Part 405, Subpart R. The intermediary or PRRB hearings are not appropriate for disputes involving the substance of the regulations or the law, such as the calculation of the payment amounts by HCFA.

Appeals of determinations on individual beneficiary claims may be made by the beneficiary in accordance with the procedures in Part 405, Subpart G. In these cases, the beneficiary may request a reconsideration regardless of the amount in controversy. If the beneficiary is dissatisfied with the reconsideration determination, he or she may appeal further by requesting a hearing if the amount in controversy is $100 or more. In accordance with Subpart G, the hospice also may appeal a finding by the intermediary that items or services furnished to a beneficiary are not covered because they are not reasonable and necessary for the palliation or management of terminal illness, and that the beneficiary or the hospice, or both, should have known this. The hospice may request reconsideration regardless of the amount in controversy. At least $100 must be in controversy to request a hearing. The hospice may not combine claims from more than one beneficiary to reach the $100 minimum.

9. Reporting and Recordkeeping Requirements

The prospective payment method we are proposing to use for hospice care enables us to design a system of reporting requirements which is less comprehensive than the requirements that are necessary to operate a retrospective cost based system.

HCFA is developing cost reporting forms and will distribute them upon completion to hospices so that they can make any changes needed in their recordkeeping systems to collect the necessary information.

G. Coinsurance

Section 1813(a)(4) of the Act specifies that the amount payable for hospice care shall be reduced by a coinsurance amount for drugs and biologicals provided on an outpatient basis, and for respite care. The statute further specifies in section 1813(a)(4)(B) of the Act that no coinsurance or deductibles, other than those permitted for drugs and biologicals and for respite care, may be imposed for services furnished by hospices to beneficiaries during the period of an election, regardless of the setting of the services. Hospices will be expected to charge beneficiaries for applicable coinsurance amounts.

We are not proposing to include the amount of coinsurance collected by the hospice in determining if the cap amount is exceeded. The statutory language specifies that "the amount of payment made under this part for hospice care . . . may not exceed the 'cap amount'. . .". Since the statute is specific regarding the amount of Medicare payment made, we are proposing to subject only actual payments made by the Medicare program to the cap amount. In this way, we also avoid additional administrative burdens associated with recordkeeping for drug coinsurance.

1. Drugs and Biologicals

The statute specifies that the hospice may charge the beneficiary a coinsurance amount equal to 5 percent of the reasonable cost of the drug or biological to the hospice, but not more than $5, for each prescription furnished on an outpatient basis. We have interpreted "furnished on an outpatient basis" to mean services that would be covered under the routine home care rate and the continuous home care rate. The statute further requires that the hospice establish a "drug copayment schedule" that specifies each drug and the copayment to be charged. The charges included on the schedule must approximate 5 percent of the cost of the drugs of biologicals to the hospice, up to the $5 maximum. Additionally, the cost of the drug or biological may not exceed what a prudent buyer would pay in similar circumstances. The intermediary will review the schedules developed by the hospices to assure that they are reasonable.

These schedules must be approved by the intermediary before they are used. The schedule will permit beneficiaries to know in advance the amount of copayment and will assure consistent assessment of copayments on beneficiaries. There is no cumulative maximum coinsurance for drugs and biologicals; therefore, the coinsurance is applicable for each prescription furnished by the hospice.

The statute specifies that the amount payable for hospice care shall be reduced by the copayment amount assessed the beneficiary. However, since we are proposing that the payment method used for hospice care furnished on an outpatient basis would be based on an all inclusive rate per day for the services furnished, we are also proposing that individual per diem payments not be reduced when the copayment for drugs is applicable. Instead, the application and collection of copayments by the hospice would be assumed and an adjustment would be made by HCFA in determining the payment rates for home care to offset the average copayment collected by the hospice. (See section III. F. 3 of this preamble for a description of the calculation of the rates.)

In developing the payment rates for routine home care and continuous home care, we propose to reduce the portion of the per deim rate attributable to drugs by the average coinsurance expected to be collected by the hospice before the rate is calculated. We have estimated the amount of offset from cost and utilization data collected from the Medicare hospice demonstration project. In addition to reflecting the intent of the statute more accurately, this proposed method of reducing Medicare payments by the coinsurance for drugs and biologicals would greatly simplify claims processing. If we were to reduce individual payments whenever a drug or biological was furnished by the

hospice to a beneficiary, the hospice would have to notify the intermediary through the billing process each time a drug was furnished, and indicate the number of drugs furnished during each visit. Under our proposed methodology this complication to the billing mechanism can be alleviated. Every outpatient visit would be billed and payment would be made uniformly at either the routine home care or continuous home care rate.

We are proposing this approach because we believe that this is the most equitable and least administratively burdensome means of implementing the copayment provision.

2. Respite Care

The statute specifies that the hospice may charge the beneficiary a coinsurance equal to 5 percent of the estimated cost of respite care. (See section III.F.3. of this preamble for a description of this estimate.) The total amount of coinsurance for respite care for any beneficiary during a hospice coinsurance period may not exceed the amount of the inpatient hospital deductible applicable for the year in which the hospice coinsurance period began. Section 1813(a)(4)(A)(ii) establishes a hospice coinsurance period for purposes of this provision as a period which begins with the first day for which an election for hospice services is in effect for the beneficiary, and ends with the close of the first period of 14 consecutive days on which no such election is in effect for the beneficiary.

Thus, if a beneficiary elects to use all 3 of his election periods consecutively (without a 2 week break), he or she would be subject to a maximum coinsurance for respite care equal to the hospital inpatient deductible. Similarly, if a break between election periods exceeds 14 days, the maximum coinsurance for respite care would double or triple (depending on the number of election periods used and the timing of subsequent elections).

Example: Mr. Brown elected an initial 90 day period of hospice care. Five days after the initial period of hospice care ended, Mr. Brown began another period of hospice care under a subsequent election.

Immediately after that period ended, he began a third period of hospice care under a final election period. Mr. Brown received inpatient respite care during all three periods of hospice care. Since these election periods were not separated by 14 consecutive days, they constitute a single hospice coinsurance period. Therefore, the maximum coinsurance for respite care during all three periods of hospice care may not exceed the amount of the inpatient hospital deductible for the year in which the first period began.

Because we wish to keep uniformity between application of the two types of coinsurance provisions, and because of the ease of administering the claims processing, we are proposing to reduce the payment rate for inpatient respite care determined by HCFA by the average amount of respite coinsurance expected to be collected, as we are proposing to do with the drug coinsurance. Thus, to establish the inpatient respite care rate, we would reduce the estimated cost of inpatient care by the projected average coinsurance amount.

The hospice is responsible for billing and collecting the coinsurance amounts from the beneficiary. We are not proposing a separate rate for respite care after an individual reaches the inpatient hospital deductible amount. It is highly unlikely that the beneficiary will exceed this limit on copayment. In order for this result to occur, more than 93 days of inpatient respite care would need to be received while he or she was under the care of the hospice. Section 1861(dd)(2)(A)(iii) of the Act limits inpatient days to 20 percent of the aggregate number of days of hospice care provided to Medicare beneficiaries and would be a deterrent to allowing an individual to receive 93 days of inpatient respite care. Section 1861(dd)(1)(G) of the Act, that limits respite care to periods of not more than 5 consecutive days, would also serve to reduce the possibility that an individual would receive 93 days of inpatient respite care. If the limit is reached, however, the hospice is prohibited by law from collecting additional copayments.

H. Intermediaries

Section 1816(e)(5) of the Act requires the Secretary to designate intermediaries to serve hospices. Therefore, we are proposing to designate one intermediary per State to serve freestanding hospices, except that certain designated intermediaries will serve freestanding hospices across State lines in keeping with their longstanding service area.

We believe that the designation of one intermediary per State to serve freestanding hospices would aid coordination between intermediaries designated to reimburse those hospices and the local intermediaries and carriers that would handle bills for services not related to the terminal diagnosis and services provided by an attending physician not employed by the hospice. This coordination will help to assure that appropriate payments are made for services provided to individuals electing hospice care.

Section 1816(e)(5) of the Act also directs the Secretary to give special consideration before designating an intermediary to serve a hospice if it is based in another Medicare provider (for example, a hospital or a home health agency). We have determined that a hospice that is a subdivision of another Medicare certified provider generally would be served by the intermediary serving the parent provider regardless of whether it is the designated hospice intermediary for the State. We believe that in many cases it will be the hospice intermedary.

We believe that having the same organization be responsible for payments to the parent provider and its subdivision certified as a hospice will provide necessary control of overall Medicare program payments to the facility. We believe that this consideration is sufficient to warrant some deviation from the statewide intermediaries that would be designated for freestanding hospices.

The one exception to a hospice being served by the same intermediary that serves its parent provider would be for a hospice whose parent provider deals directly with HCFA. The proposed regulations would require that these hospices use contract intermediaries designated by HCFA. This exception is based on our proposal, published in the **Federal Register** on February 18, 1982 (47 FR 7269), to reduce the number of providers dealing directly with HCFA. The requirement that hospices use contract intermediaries would prevent those hospices from having to change to another intermediary should the proposal to reduce the number of providers being served by HCFA be finalized.

The designation of statewide intermediaries to serve freestanding hospices and hospices whose parent providers are served by HCFA is consistent with HCFA's long-term goal for achieving an overall Medicare contractor configuration based on geography and workloads which meets program needs in a more efficient and effective manner. A similar regulation published in September 1982 designated statewide intermediaries to serve freestanding HHAs. Currently, in just over half of the States, only one intermediary is generally available to serve providers.

The criteria for selecting intermediaries to serve hospices would include past performance and the ability of the intermediary to assume the additional workload.

We propose that the following intermediaries be designated to serve

freestanding hospices and hospices whose parent providers are served by HCFA. We note that these designations are not final and may be changed. Except as noted below, each hospice that is required to use a designated intermediary would be serviced by the intermediary listed for its State.

Alabama—Blue Cross and Blue Shield of Alabama
Alaska—Blue Cross and Blue Shield of Washington and Alaska
Arizona—Aetna Life and Casualty
Arkansas—Arkansas Blue Cross and Blue Shield, Inc.
California—Blue Cross of California (Woodland Hills)
Colorado—Blue Cross/Blue Shield of Colorado
Connecticut—Blue Cross and Blue Shield of Connecticut, Inc.
Delaware—Blue Cross of Delaware
District of Columbia—Group Hospitalization, Inc. (Washington, D.C.)
Florida—Blue Cross and Blue Shield of Florida, Inc.
Georgia—Blue Cross of Georgia/Columbus, Inc.
Hawaii—Hawaii Medical Service Association
Idaho—Blue Cross of Idaho Health Services
Illinois—Health Care Service Corporation (Chicago, Ill.)
Indiana—Mutual Hospital Insurance, Inc. (Indianapolis, Inc.)
Iowa—Blue Cross of Iowa, Inc.
Kansas—Blue Cross of Kansas, Inc.
Kentucky—Blue Cross and Blue Shield of Kentucky, Inc.
Louisiana—Blue Cross of Lousiana
Maine—Associated Hospital Service of Maine
Maryland—Blue Cross of Maryland, Inc.
Massachusetts—Aetna Life and Casualty (Farmington)
Michigan—Blue Cross and Blue Shield of Michigan
Minnesota—Blue Cross of Minnesota
Mississippi—Blue Cross and Blue Shield of Mississippi, Inc.
Missouri—Blue Cross Hospital Services, Inc., of Missouri (St. Louis, Missouri)
Montana—Blue Cross of Montana
Nebraska—Mutual of Omaha Insurance Company
Nevada—Aetna Life and Casualty (Reno, Nevada)
New Hampshire—New Hampshire-Vermont Health Service, Inc.
New Jersey—The Prudential Insurance Company of America
New Mexico—New Mexico Blue Cross and Blue Shield, Inc.
New York—Blue Cross and Blue Shield of Greater New York
North Carolina—Blue Cross and Blue Shield of North Carolina
North Dakota—Blue Cross of North Dakota
Ohio—Hospital Care Corporation (Cincinnati, Ohio)
Oklahoma—Blue Cross and Blue Shield of Oklahoma
Oregon—Blue Cross of Oregon
Pennsylvania—Blue Cross of Greater Philadelphia
Puerto Rico—[To be designated]
Rhode Island—Hospital Service Corporation of Rhode Island
South Carolina—Blue Cross and Blue Shield of South Carolina
South Dakota—Blue Cross of Western Iowa and South Dakota
Tennessee—Blue Cross and Blue Shield of Tennessee (Chattanooga, Tennessee)
Texas—Group Hospital Service, Inc. (Dallas, Texas)
Utah—Blue Cross of Utah
Vermont—New Hampshire-Vermont Health Services, Inc.
Virgin Islands—[To be designated]
Virginia—Blue Cross of Southwestern Virginia (Roanoke, Virginia)
Washington—Blue Cross of Washington and Alaska
West Virginia—Blue Cross Hospital Services, Inc. (Charleston, West Virginia)
Wisconsin—Blue Cross/Blue Shield United of Wisconsin
Wyoming—Blue Cross of Wyoming

The following are the exceptions to the State designations:

- Group Hospitalization, Inc.—services of District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington County, Fairfax County, and the cities of Alexandria, Falls Church and Fairfax in Virginia.
- Blue Cross of Western Iowa and South Dakota—services all of South Dakota and 26 counties in Iowa.
- Oregon Blue Cross—services Oregon and Clark County in Washington, a suburb of Portland.
- St. Louis Blue Cross—services Missouri, and Johnson and Wyandotte Counties in Kansas.
- Chattanooga Blue Cross—services Walker, Dade and Catoosa Counties in Georgia.

These service areas do not overlap with those of other designated intermediaries and thus are consistent with HCFA's plan for designating intermediaries to serve certain hospices.

The proposed designations of Medicare intermediaries to serve hospices require changes to 42 CFR Part 421, "Intermediaries and Carriers". Section 421.3 would be revised to insert the term hospices in the definitions of "Intermediary" and "Provider."

We are proposing to amend §§ 421.103, 421.104 and 421.106 to prohibit a hospice from electing, nominating or changing an intermediary as other providers are allowed to do. This limitation is contained in section 1816(e)(5) of the Act, which directs the Secretary to designate intermediaries to serve hospices "[n]otwithstanding any other provision of this title". The statute does not give hospices the option to choose an intermediary. We believe that hospices would be able to establish good working relationships with designated intermediaries. However, we recognize that problems may occasionally arise. HCFA regional offices would investigate these cases and make every reasonable effort to reconcile differences between the hospice and its intermediary. HCFA would review these problems as part of its responsibility to assure adequate contractor performance using the performance criteria included in current regulations at 42 CFR 421.120. HCFA would monitor the performance of all intermediaries on an ongoing basis to assure that designations remain appropriate.

These proposed intermediary designations for hospices would also require some changes to § 421.117. We are proposing to revise the title of § 421.117 to read "Designation of intermediaries for freestanding home health agencies and for hospices". That section would be revised to add a reference to section 1816(e)(5) of the Act that requires the Secretary to designate intermediaries for hospices. The revision would also specify that freestanding hospices and hospices whose parent providers are served by HCFA would receive payment for covered services furnished to Medicare beneficiaries through an intermediary designated by HCFA. Any other provider-based hospice would be served by the same intermediary that serves its parent provider.

IV. Impact analysis

A. Executive Order 12291

Executive Order 12291 requires Federal agencies to examine the economic effect of regulations that they issue to determine whether the effect meets any of the criteria of section 1(b) of the Order:

(1) Will have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers or individual industries; or,

(3) Cause significant adverse effects on competition, employment, investment productivity, innovation or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Currently, Medicare pays for many components of hospice care when furnished by a Medicare provider. Beneficiaries now receive home health care; durable medical equipment; inpatient hospital services; and physician services. Section 122 of TEFRA (Pub. L. 97-248) expands the scope of Medicare benefits by adding, for a 3-year period, under Part A, hospice care for terminally ill beneficiaries.

The estimated net costs of the hospice program are:

FY 84—$80 million
FY 85—$110 million
FY 86—$160 million

These net budget costs include the estimated payments to hospices offset by the "traditional care" hospital costs foregone.

HCFA actuaries reviewed the most current Medicare data for the last six months of life, for cancer deaths. The patterns of hospitalization and survival after the discovery of cancer were analyzed and matched to hospice stay duration distributions from the HCFA hospice demonstration. The analysis showed that even though persons dying of cancer used, on the average, close to 30 hospital and skilled nursing facility days in their last six months of life, there were less than ten cancer hospital days used after discharge from the stay in which cancer was initially diagnosed. It is unlikely that the hospital stay in which cancer is discovered would be shortened by the ability to choose hospice care, since it would take time following the initial cancer diagnosis for the cancer patient and his family to come to grips with the fact that the illness will be terminal and to identify and elect hospice care. Consequently, fewer than 10 hospital days would be replaced by hospice care for people who ultimately elect hospice, and persons receiving curative treatments during the stay would not elect hospice care. As a result it is anticipated that the average patient who elects hospice care will result in a net increase in Medicare program costs and these costs will increase as the number of beneficiaries who elect the hospice benefit increases.

Because of lack of actual program experience, we are not certain that this benefit is cost-beneficial to society as directed by section 2 of this Order. However, Congress has mandated this benefit, which we are implementing through these regulations, and the impact of which will be further analyzed during the benefit's 3-year duration.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires Federal agencies to examine the anticipated impact of their regulations to determine whether they would result in significant impact on a substantial number of affected small entities. There are presently 1200 entities self-designated as hospices. Of these, 450 are hospital-based, 200 operate under the auspices of a home health agency (HHA) and 478 are independently operated. The remaining 72 self-designated hospices fall within a variety of other categories.

We are not able to determine the number of providers that would seek certification. We believe that those seeking certification would come from among the 1200 providers currently operating as self-designated hospices. This assumption results from the fact that:

(1) The incremental costs associated with meeting the proposed conditions of participation should not be prohibitive to these providers; and,

(2) Start-up costs for new providers aiming to become a hospice would not be reimbursed to the extent that they are under a cost reimbursement methodology. Currently operating self-designated hospices would not be affected by this point.

For those hospices that would seek certification, we believe that they would be affected by the conditions of participation, the proposed cap and the payment amounts.

1. Conditions of Participation

In order to determine any significant financial cost that the proposed conditions of participation may impose upon these hospice providers, we obtained estimates from reliable sources within national organizations representing hospice interests. They provided information on potential items and services hospices may not provide now, but would be required to provide in order to participate in the Medicare program. The information obtained reveals that hospitals and home health agencies (HHAs) may need to initiate or intensify bereavement and volunteer services before they will be eligible to participate as hospice providers.

The hospice concept, and consequently the proposed regulations, encourage volunteer use. Technically a hospice could have no salary costs, despite requirements for direct provision of physician, nursing, social work, and counseling services, if the hospice filled these positions with qualified volunteer professional specialists.

The costs associated with implementation of volunteer services should be negligible. We do not believe the recordkeeping requirements associated with volunteer use will represent a significant financial burden as many existing hospices keep records of volunteer use as a matter of practice.

Bereavement counseling, while not a reimbursable item is nevertheless a mandated service. Costs involved would depend upon the specialty of the bereavement counselor as well as whether or not this person serves in a volunteer capacity. Estimation of costs for bereavement counseling is totally speculative, since there has been no attempt on our part to specify the qualifications of a "counselor" or the time involved in bereavement counseling.

We have also identified the other specialty areas, i.e., social work, nursing and counseling that providers claim may have some impact on the costs associated with participation.

Hospices that offer social work services under contractual or consultative arrangements would be required to provide the services directly, by full-time or part-time employees. Since a consultant's hourly wage is more than that of a provider's employee, direct employment could prove to be in the facility's best financial interest.

Nursing services offered through contractual arrangements would also have to be realigned so that the hospice nursing employees are sufficient in number to meet the needs of the average patient census. Again, this could benefit the facility financially.

The third specialty area is counseling. (Bereavement counseling was addressed earlier.) Dietary counseling is already available and provided by hospitals and HHAs. Pastoral counseling, although available in hospitals but not necessarily in HHAs, is usually a volunteer effort. As in bereavement services, we have not required any specific occupational expertise for "other counselors".

Therefore, we do not foresee a financial burden placed upon a hospice provider for the required social work, nursing and counseling services. We further believe that any incremental costs imposed upon providers that want to participate as a hospice would not result in a significant impact.

2. Hospice Cap

The intention of the cap is to ensure that payments for hospice care would not exceed the amount that would have been spent by Medicare if the patient had been treated in a traditional setting. However, Medicare beneficiaries may use traditional forms of treatment before seeking hospice care. Therefore, although the cap places a limit on Medicare reimbursement for hospice care, based on the cost of traditional care, it does not assume that hospice care is used as a substitute for traditional care. As a result, despite the cap we project that Medicare costs overall would increase because of the addition of the hospice benefit.

We believe certified hospices would be impacted by the cap if: (1) their average length of stay is higher than the

experience with the demonstration; or, (2) if hospices' utilization of the more expensive levels of care (i.e., general inpatient care and continuous home care) is higher than the demonstration experience. However, the statute establishes the methodology for determining the cap amount which is described elsewhere in the preamble. Therefore, any impact on affected hospices would result from the statute and not these regulations.

3. Payment Amounts

The proposed payment amounts are intended to approximate the costs hospices generally incur in providing covered hospice care. In calculating these amounts, we have relied on data concerning the kinds of services furnished by hospices, the cost of such services and the frequency with which these services are furnished to hospice patients. The data received from our demonstrations reflect the experience of the demonstration hospices during the course of the demonstration. Therefore, we do not believe that the amounts would significantly impact on affected hospices as they approximate the current costs of operation and do not reflect a significant incremental change from the current situation.

For the reasons noted in this analysis, the Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980, that these proposed regulations are not likely to result in a significant impact on a substantial number of small entities.

C. Paperwork Burden

Sections 418.22; 418.56(d)(3), (5), and (7); 418.58; 418.70 (b), (c), and (d); 418.74; 418.96(a); 418.100(b); and 418.310 of this proposed rule contain information collection requirements. HCFA has submitted these requirements to the Office of Management and Budget (OMB) for its review under section 3504(h) of the Paperwork Reduction Act of 1980. Interested parties should direct their comments on the information collection requirements contained in this proposed rule to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Health Care Financing Administration.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

List of Subjects

42 CFR Part 400

Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare.

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,
Hospice care,
Hospitals,
Inpatients,
Kidney diseases,
Laboratories,
Medicare,
Nursing homes,
Onsite surveys,
Outpatient providers,
Reporting requirements,
Rural areas,
X-rays.

42 CFR Part 408

Health facilities,
Health maintenance organizations (HMO),
Kidney diseases,
Medicare.

42 CFR Part 409

Health facilities,
Health maintenance organizations (HMO),
Medicare.

42 CFR Part 418

Coinsurance,
Hospice,
Medicare,
Respite care,
Volunteers.

42 CFR Part 420

Administrative practice and procedure,
Fraud,
Health facilities,
Health maintenance organizations (HMO),
Health professions,
Medicare.

42 CFR Part 421

Administrative practice and procedure,
Contracts (Agreements),
Courts,
Health care,
Health facilities,
Health maintenance organizations (HMO),
Health professions,
Information (Disclosure),
Lawyer,
Medicare,
Professional Standards Review Organizations (PSRO),
Reporting requirements.

42 CFR Part 489

Clinics,
Comprehensive outpatient rehabilitation facilities (CORFs),
Health care,
Health facilities,
Hospices,
Medicare,
Provider Agreements,
Rural health clinics,
Termination procedures.

We are proposing to amend 42 CFR Chapter IV as set forth below:

A. The Table of Contents for Chapter IV is amended by adding a new Part 418 to Subchapter B to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER B—MEDICARE PROGRAMS

* * * * *

Part 418—Hospice Care

* * * * *

PART 400—INTRODUCTION; DEFINITIONS

The authority citation for Part 400 reads as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

B. Part 400 is amended as follows:

Section 400.202 is amended by revising the definition of *"Provider"* to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

"Provider" means a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, or a home health agency, or effective November 1, 1983 through September 30, 1986, a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

C. Part 405, Subpart C is amended as follows:

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

Authority: Secs. 1102, 1128A, 1815, 1833, 1842, 1861, 1862, 1870, 1871 and 1879, Social Security Act as amended (42 U.S.C. 1302, 1320a–7a, 1395g, 1395l 1395u, 1395x, 1395y, 1395gg, 1395hh and 1395pp) and 31 U.S.C. 951.

2. Section 405.301 is amended by revising the introductory paragraph and paragraphs (g), (j) and (k) to read as follows:

§ 405.310 Types of expenses not covered.

Notwithstanding any other provisions of this part, or Part 418 of this chapter, no payment may be made for any expenses incurred for the following items or services:

* * * * *

(g) Custodial care except as necessary for the palliation or management of a terminal illness and related conditions as provided in Part 418 of this chapter (in the case of extended care services, any care which does not meet the definition of extended care in §§ 405.126–405.128);

* * * * *

(j) Personal comfort items and services (for example a television set, or telephone service, etc.) except as necessary for the palliation or management of a terminal illness and related conditions as provided in Part 418 of this chapter.

* * * * *

(k)(1) Which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (thus, payment could not be made for the rental of a special hospital bed to be used by an individual in his home if it was not a reasonable and necessary part of the individual's treatment); or,

(2) Which are not reasonable and necessary, in the case of hospice care provided under Part 418 of this chapter, for the palliation or management of a terminal illness and related conditions (thus payment may be made for hospice care that is reasonable and necessary for the palliation or management of a terminal illness and related conditions);

* * * * *

3. Section 405.330 is amended by revising the introductory material in paragraph (a) to read as follows:

§ 405.330 Payment for certain nonreimbursable expenses.

(a) Notwithstanding the provisions of § 405.310, payment may be made for items or services furnished after October 30, 1972, which involve custodial care (§ 405.310(g)); items or services which are not reasonable and necessary for the diagnosis or treatment of illness of injury or to improve the functioning of a malformed body member (§ 405.310(k) (1)); or, in the case of hospice care provided under Part 418 of this chapter, items and services which are not reasonable and necessary for the palliation or management of a terminal illness and related conditions (§ 405.310(k)(2)), If:

* * * * *

4. Section 405.332 is amended by revising the introductory material in paragraph (a) to read as follows:

§ 405.332 Criteria for determining that there was knowledge that certain items or services were excluded from coverage.

(a) *The individual to whom items or services are furnished.* An individual shall be found to have known that items or services furnished to him were excluded from coverage only if he, or someone acting on his behalf, has been given written notice stating that the items or services were excluded from coverage. This paragraph applies only to items and services excluded from coverage as "custodial care" (§ 405.310(g)) or as "not reasonable and necessary" for the diagnosis or treatment of illness or injury or, in the case of hospice care provided under Part 418 of this chapter, for the palliation or management of a terminal illness and related conditions (§ 405.310(k)).

Written notice must consist of the following:

* * * * *

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

The authority citation for Subpart D reads as follows:

Authority: Secs 1102, 1814(b), 1815(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

D. Part 405, Subpart D is amended as follows: Section 405.455 is amended by revising paragraph (a) to specify that it does not apply to services furnished by hospices. As revised, paragraph (a) reads as follows:

§ 405.455 Amount of payments where customary charges for services furnished are less than reasonable cost.

(a) *Principle.* Providers of services, other than comprehensive outpatient rehabilitation facilities and hospices, will be paid the lesser of the reasonable cost of services furnished to beneficiaries or the customary charges made by the provider for the same services. (Payment to comprehensive outpatient rehabilitation facilities and hospices is based on the reasonable cost of services.) Public providers of service furnishing services free of charge or at a nominal charge will be paid fair compensation for services furnished to beneficiaries. This principle is applicable to services furnished by providers in cost reporting periods beginning after December 31, 1973. For special rules concerning HMO's and providers of services and other health care facilities that are owner or operated by an HMO, or related to an HMO by common ownerships or control, see §§ 405.2042(b)(14) and 405.2050(c).

* * * * *

E. Part 405, Subpart S is amended as follows:

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

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883, Social Security Act as amended (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

2. Section 405.1901 is amended by revising the introductory language in paragraph (a) and the definition of "Provider of services or provider", and by revising paragraph (b)(2) as follows:

§ 405.1901 The certification process.

(a) *Definitions.* As used in this subpart—

* * * * *

Provider of services or *provider* means a hospital, skilled nursing facility, home health agency, hospice, comprehensive outpatient rehabilitation facility, or provider of outpatient physical therapy or speech pathology services.

* * * * *

(b) *Conditions of Participation; Conditions for Coverage.*

* * * * *

(2) Be in compliance with the applicable conditions prescribed in Subparts J, K, L, M, N, Q, or U of this part, Subpart C of Part 41B, or Subpart A of Part 481.

PART 408—MEDICARE ELIGIBILITY AND ENTITLEMENT

The authority citation for Part 408 reads as follows:

Authority: Secs. 202 (t) and (u), 226, 226A, 1102, 1811 and 1818 of the Social Security Act (42 U.S.C. 402 (t) and (u), 426, 426–1, 1302, 1395c, 1395i–2. Section 103 of Pub. L. 89–97 (42 U.S.C. 426a)).

F. Part 408 is amended as follows: Section 408.2 is revised to read as follows:

§ 408.2 Scope.

This subpart specifies the conditions of eligibility for hospital insurance and sets forth certain specific conditions that affect entitlement to benefits. Hospital insurance is authorized under Part A of Title XVIII and is also referred to as Medicare Part A. It includes inpatient hospital care, posthospital skilled nursing facility care, posthospital home health services, and hospice care.

PART 409—MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS

The authority citation for Part 409 reads as follows:

Authority: Secs. 1102, 1812, 1813, 1814, 1861, 1866, 1871, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395f, 1395x, 1395cc, 1395hh, 1395rr, and 1395tt).

G. Part 409 is amended as follows: Section 409.5 is revised to read as follows:

§ 409.5 General description of benefits.

Hospital insurance (Part A of Medicare) helps pay for inpatient hospital services and posthospital SNF care. It also pays for home health services and hospice care. There are limitations on the number of days of care that Medicare can pay for and there are deductible and coinsurance amounts for which the beneficiary is responsible. For each type of service, certain conditions must be met as specified in the pertinent sections of this subpart and in Part 418 of this chapter regarding hospice care. The special conditions for inpatient hospital services furnished by a qualified U.S., Canadian, or Mexican hospital are set forth in Part 405, Subpart A of this chapter.

H. A new Part 418 is added as set forth below:

PART 418—HOSPICE CARE

Subpart A—General Provisions and Definitions

Sec.

418.1 Statutory basis.
418.2 Scope of part.
418.3 Definitions.

Subpart B—Eligibility, Election and Duration of Benefits

Sec.

418.20 Eligibility requirements.
418.22 Certification of terminal illness.
418.24 Election of hospice care.
418.26 Elements of the election statement.
418.28 Revoking the election of hospice care.
418.30 Change of the designated hospice.
418.32 Duration of hospice coverage under Medicare.

Subpart C—Conditions of Participation

418.50 Condition of participation—General provisions.

Administration

418.52 Condition of participation—Governing body.
418.54 Condition of participation—Medical director.
418.56 Condition of participation—Professional management.
418.58 Condition of participation—Plan of care.
418.60 Condition of participation—Continuation of care.
418.62 Condition of participation—Informed consent.
418.64 Condition of participation—In-service training.
418.66 Condition of participation—Quality assurance.
418.68 Condition of participation—Interdisciplinary group.
418.70 Condition of participation—Volunteers.
418.72 Condition of participation—Licensure.
418.74 Condition of participation—Central clinical records.

Core Services

418.80 Condition of participation—Core services.
418.82 Condition of participation—Nursing services.
418.84 Condition of participation—Medical social services.
418.86 Condition of participation—Physician services.
418.88 Condition of participation—Counseling services.

Other Servies

418.90 Condition of participation—Other services.
418.92 Condition of participation—Physical therapy, occupational therapy, and speech-language pathology.
418.94 Condition of participation—Home health aide and homemaker services.
418.96 Condition of participation—Medical supplies.
418.98 Condition of participation—Short term inpatient care.

Freestanding Hospice With Inpatient Unit

418.100 Condition of participation for freestanding hospices providing inpatient care directly.

Subpart D—Covered Services

418.200 Requirements for coverage.
418.202 Covered Services.

Sec.

418.204 Special coverage requirements.

Subpart E—Reimbursement Methods

418.301 Reimbursement for hospice care.
418.302 Payment procedures for hospice care.
418.304 Payment to the hospice for physician services.
418.306 Determination of payment rates.
418.308 Limitation on the amount of hospice payments.
418.309 Determination of the hospice cap amount.
418.310 Reporting and recordkeeping requirements.
418.311 Administrative appeals.

Subpart F—Coinsurance

418.400 Individual liability for coinsurance for hospice care.
418.402 Individual liability for services that are not considered hospice care.
418.405 Reduction of Medicare reimbursement by individual coinsurance liability.

Authority: Secs. 1102, 1811–1814, 1861–1866, and 1871, Social Security Act (42 U.S.C. 1395c–1395f, 1395x–1395cc and 1395hh).

Subpart A—General Provisions and Definitions

§ 418.1 Statutory basis.

This part implements section 1861(dd) of the Social Security Act. Section 1861(dd) specifies services covered as hospice care and the conditions that a hospice program must meet in order to participate in the Medicare program. The following sections of the Act are also pertinent:

(a) Sections 1812(a) (4) and (d) of the Act specify eligibility requirements for the individual and the benefit periods.

(b) Section 1813(a)(4) of the Act specifies coinsurance amounts.

(c) Sections 1814(a)(8) and 1814(i) of the Act contain conditions and limitations on coverage of and reimbursement for hospice care.

(d) Sections 1862(a) (1), (6) and (9) of the Act establish limits on hospice coverage.

§ 418.2 Scope of part.

Subpart A of this part sets forth the statutory basis and scope and defines terms used in this part. Subpart B specifies the eligibility requirements and the benefit periods. Subpart C specifies conditions of participation for hospices. Subpart D describes the covered services and specifies the limits on services covered as hospice care. Subpart E specifies the reimbursement methods and procedures. Subpart F specifies coinsurance amounts applicable to hospice care.

§ 418.3 Definitions.

For purposes of this part—

"Attending physician" means a physician who—

(a) Is a doctor of medicine or osteopathy; and

(b) Is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

"Bereavement counseling" means counseling services provided to the individual's family after the individual's death.

"Cap period" means the twelve month period ending October 31 used in the application of the cap on overall hospice reimbursement specified in § 418.309.

"Carrier" means an organization that has a contract with HCFA to administer the Medicare's supplementary medical insurance program.

"Election period" means one of three periods for which individual may elect to receive Medicare coverage of hospice care. The periods consist of two 90-day periods and one 30-day period.

"Employee" means an employee (defined by section 210(j) of the Act) of the hospice or, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned and works substantially full time for the hospice unit. "Employee" also refers to a volunteer under the jurisdiction of the hospice.

"Freestanding hospice" means a hospice that is not part of any other type of participating provider.

"Hospice" means a public agency or private organization or subdivision of either of these that—

(a) Is primarily engaged in providing care to terminally ill individuals; and

(b) Meets the conditions specified in §§ 418.50–418.98 and has a valid provider agreement and if it is a freestanding hospice that provides inpatient care directly, meets the condition in § 418.100.

"Intermediary" means an organization that has a contract with the Secretary to administer the benefits covered by Medicare's hospital insurance program, including the benefits covered under this part.

"Physician" means physician as defined in § 405.232a of this chapter.

"Social worker" means a person who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education.

"Terminally ill" means that the individual has a medical prognosis that his or her life expectancy is 6 months or less.

Subpart B—Eligibility, Election and Duration of Benefits

§ 418.20 Eligibility requirements.

In order to be eligible to elect hospice care under Medicare, an individual must be—

(a) Entitled to Part A of Medicare; and

(b) Certified as being terminally ill in accordance with § 418.22.

§ 418.22 Certification of terminal illness.

(a) *Obtaining certification.* The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

(1) For the first 90-day period of hospice coverage, the hospice obtains, no later than two calendar days afer hospice care is initiated, written certification statements signed by—

(i) The medical director of the hospice or the physician member of the hospice interdisciplinary group; and

(ii) The individual's attending physician if the individual has an attending physician.

(2) For the subsequent 90-day or 30-day period, the hospice obtains, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group.

(b) *Certification statement.* The certification must include—

(1) The statement that the individual's medical prognosis is that his or her life expectancy is six months or less; and

(2) The signature(s) of the physician(s) required to certify the terminal illness under paragraph (a) of this section.

(c) *Maintaining a record.* The hospice maintains the certification statements.

§ 418.24 Election of hospice care.

(a) *Election statement.* If an individual who meets the eligibility requirements for hospice car elects to receive that care, he or she must file an election statement with a particular hospice. The election statement must include the elements specified in § 418.26.

(b) *Sequence of election periods.* The two 90-day election periods must be used before the 30-day period.

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice; and

(2) Does not revoke the election under the provisions of §418.28.

(d) *Effective date of election.* (1) An individual may designate an effective date for the election period that begins with the first day of hospice care of any subsequent day of hospice care.

(2) An individual may not designate an effective date that is earlier than the date that the election is made.

(e) *Waiver of other benefits.* An individual must waive all rights to Medicare payments for the duration of the election of hospice care for the following services:

(1) Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice).

(2) Any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or that are equivalent to hospice care except for services—

(i) Provided by the designated hospice;

(ii) Provided by another hospice under arrangements made by the designated hospice; and

(iii) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

§ 418.26 Elements of the election statement.

The election statement must include the following:

(a) Identification of the particular hospice that will provide care to the individual.

(b) Individual's acknowledgement of terminal illness.

(c) Individual's acknowledgement that he or she understands that certain Medicare services are waived by the election.

(d) The effective date of the election.

(e) The signature of the individual.

§ 418.28 Revoking the election of hospice care.

(a) An individual may revoke his or her election of hospice care at any time during an election period.

(b) To revoke the election of hospice care, the individual must file a statement with the hospice that includes the following information:

(1) A signed statement that the individual revokes his or her election for Medicare coverage of hospice care for the remainder of that election period.

(2) The date that the revocation is to be effective. (An individual may not designate an effective date earlier than the date that the revocation is made).

(c) An individual, upon revoking the election of Medicare coverage of hospice care for a particular election period—

(1) Is no longer covered under Medicare for hospice care;

(2) Resumes Medicare coverage of the benefits waived under §418.24(e)(2); and

(3) May at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

§ 418.30 Change of the designated hospice.

(a) An individual may change, once in each election period, the designation of the particular hospice from which he or she elects to receive hospice care.

(b) The change of the designated hospice is not considered a revocation of the election for the period in which it is made.

(c) to change the designation of hospice programs, the individual must file, with the hospice from which he or she has received care and with the newly designated hospice, a statement that includes the following information:

(1) The name of the hospice from which the individual has received care and the name of the hospice from which he or she plans to receive care.

(2) The date the change is to be effective.

§ 418.32 Duration of hospice coverage under Medicare.

(a) *General rule.* Except as provided under paragaph (b) of this section, Medicare coverage of hospice care will end on September 30, 1986.

(b) *Exception.* Medicare coverage of hospice care will continue beyond September 30, 1986 for an individual who has an election in effect on that date. Medicare coverage of hospice care will continue for that individual until—

(1) The end of the election period in effect; and

(2) The end of any consecutive election period(s) that the individual would have been entitled to on September 30, 1986.

Subpart C—Conditions of Participation

§ 418.50 Condition of participation—General provisions.

(a) *Standard: Compliance.* A hospice must maintain compliance with the conditions in §§ 418.50–418.98. A freestanding hospice that provides inpatient services directly must also maintain compliance with the condition in § 418.100.

(b) *Standard: Required services.* A hospice must be primarily engaged in providing the care and services described in § 418.202, must provide bereavement counseling and must—

(1) Make all services available on a 24-hour basis to meet the needs of its patients;

(2) Provide these services in a manner consistent with accepted standards of practice; and

(3) Provide these services to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of terminal illness and related conditions.

Administration

§ 418.52 Condition of participation—Governing body.

A hospice must have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operation. The governing body must also ensure that all services provided are consistent with accepted standards of practice.

§ 418.54 Condition of participation—Medical director.

The medical director must be a doctor of medicine or osteopathy who assumes overall responsibility for the hospice's patient care program.

§ 418.56 Condition of participation—Professional management.

Subject to the conditions of participation pertaining to services in §§ 418.80 and 418.90, a hospice may arrange for another individual or entity to furnish services to the hospice's patients. If services are provided under arrangement, the hospice must meet the following standards:

(a) *Standard: Continuity of care.* The hospice program assures the continuity of patient/family care in home, outpatient, and inpatient settings through a defined process of—

(1) Admission to the program that includes written admission criteria and initial assessment of the patient's/family's need and decision for care;

(2) Ongoing assessment of patient/family needs;

(3) Prompt development and review of the interdisciplinary group plan of care; and

(4) Provision of adequate and appropriate patient/family information at the point of transfer between care settings.

(b) *Standard: Written agreement.* The hospice has a legally binding written agreement for the provision of arranged services. The agreement includes at least the following:

(1) Identification of the services to be provided.

(2) A stipulation that services may be provided only with the express authorization of the hospice.

(3) The manner in which the contracted services are coordinated, supervised, and evaluated by the hospice.

(4) The role(s) of the hospice and the contractor in the intake process, patient/family assessment, and the interdisciplinary group care conferences are delineated.

(c) *Standard: Professional management responsibility.* The hospice retains professional management responsibility for those services and ensures that they are furnished in a safe and effective manner by employees meeting the qualificaitons of this part, and in accordance with requirements of this part.

(d) *Standard: Financial responsibility.* The hospice retains responsibility for payment for services.

(e) *Standard: Inpatient care.* The hospice ensures that inpatient care is furnished only in a facility which meets the requirements in § 418.98 and its arrangement for inpatient care is described in a legally binding written agreement which specifies, at a minimum—

(1) What services are provided by each party to the agreement;

(2) Requirements for documenting that services are furnished in accordance with the agreement;

(3) The qualifications of the personnel providing the services;

(4) Delineation of the financial liability and responsibility of the hospice and the other party to the agreement;

(5) That this hospice furnishes to the inpatient provider a copy of the hospice plan of care and specifies the inpatient services to be furnished;

(6) That the patient care management and plan of care decisions are the ultimate responsibility of the hospice interdisciplinary group;

(7) The manner in which the services are initiated and coordinated;

(8) That the inpatient provider has established policies consistent with those of the hospice and agrees to abide by the patient care protocols established by the hospice for its patients;

(9) That the medical record includes a record of all inpatient services and events and that a copy of the medical record and discharge summary are provided to the hospice;

(10) Specification of the individuals responsible for the implementation of the provisions of the agreement; and

(11) That the hospice retains responsibility for orientation and

continuing education of the personnel who provide the care under the agreement.

§ 418.58 Conditions of participation—Plan of care.

A written plan of care must be established and maintained for each individual admitted to a hospice program, and the care provided to an individual must be in accordance with the plan.

(a) *Standard: Establishment of plan.* The plan must be established by the attending physician, the medical director and interdisciplinary group prior to providing care.

(b) *Standard: Review of plan.* The plan must be reviewed and updated, at intervals specified in the plan, by the attending physician, the medical director and interdisciplinary group. These reviews must be documented.

(c) *Standard: Content of plan.* The plan must include assessment of the individual's needs and identification of the services including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's and family's needs.

§ 418.60 Condition of participation—Continuation of care.

A hospice may not discontinue or diminish care provided to an individual because of the individual's inability to pay for that care.

§ 418.62 Condition of participation—Informed consent.

A hospice must demonstrate respect for an individual's rights by ensuring that every individual has signed an informed consent form that specifies the type of care and services that may be provided as hospice care during the course of the illness.

§ 418.64 Condition of participation—In-service training.

A hospice must provide an ongoing program for the training and continuing education of its employees.

§ 418.66 Condition of participation—Quality assurance.

A hospice must conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided, including inpatient care and family care. The findings are used by the hospice to correct identified problems and to revise hospice policies if necessary.

(a) *Standard: Evaluation of care.* The governing body, through the hospice medical director, provides the support necessary for patient care monitoring activities and for problem identification and resolution activities. The medical staff and interdisciplinary group members—

(1) Implement and report on activities and mechanisms for monitoring the quality of patient care;

(2) Identify and resolve problems; and

(3) Make suggestions for improving patient care.

(b) *Standard: Evaluation of hospice program.* Representatives of the governing body, hospice interdisciplinary group, home care and inpatient services, and (where applicable) the organized staff of the inpatient service, monitor and evaluate the care they provide.

§ 418.68 Condition of participation—Interdisciplinary group.

The hospice must designate an interdisciplinary group composed of hospice employees to provide or supervise the care and services offered by the hospice.

(a) *Standard: Composition of group.* The hospice must have an interdisciplinary group that includes at least the following individuals:

(1) A doctor of medicine or osteopathy.

(2) A registered nurse.

(3) A social worker.

(4) A pastoral or other counselor.

(b) *Standard: Role of group.* The interdisciplinary group is responsible for—

(1) Participation in the establishment of the plan of care;

(2) Provision or supervision of hospice care and services;

(3) Periodic review and updating of the plan of care for each individual receiving hospice care; and

(4) Establishment of policies governing the day-to-day provision of hospice care and services.

(c) *Standard: Coordinator.* The hospice must designate a registered nurse to coordinate the overall plan of care for each patient.

§ 418.70 Condition of participation—Volunteers.

The hospice uses volunteers, in defined roles, under the supervision of designated qualified hospice staff members.

(a) *Standard: Training.* The hospice must provide appropriate orientation and training that is—

(1) Consistent with acceptable standards of hospice practice; such as the physiological/psychological aspects of terminal disease coping, family dynamics, bereavement, etc.;

(2) Appropriate to the anticipated responsibility of the volunteer; and

(3) Inclusive of, but not limit to the following:

(i) Goals and mission of the hospice program's services.

(ii) Need for patient confidentiality.

(iii) Response procedures for medical emergency and death.

(b) *Standard: Role.* Volunteers may be used in administrative and direct patient care roles. However, any direct patient care delivered by volunteers must be consistent with—(1) The interdisciplinary group plan of care; and (2) The volunteer's skills and qualifications.

(c) *Standard: Recruiting and retaining.* The hospice must document active and ongoing efforts to recruit and retain volunteers.

(d) *Standard: Evaluation.* The hospice volunteer services must be evaluated in accordance with the purposes and functions delineated by the governing body of the hospice.

(e) *Standard: Cost saving.* The hospice must document the cost savings achieved through the use of volunteers. Documentation must include—

(1) The identification of necessary positions which were occupied by volunteers;

(2) The work time spent by volunteers occupying those positions; and

(3) Estimates of the dollar costs which the hospice would have incurred if paid employees occupied the positions identified in paragraph (e) (1) for the amount of time specified in paragraph (e)(2).

(f) *Standard: Level of activity.* The hospice must document a continuing level of volunteer activity. Expansion of care and services achieved through the use of volunteers, including the type of services and the time worked, must be recorded.

(g) *Standard: Availability of clergy.* The hospice must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients who desire such visits and must advise patients of this opportunity.

§ 418.72 Condition of participation—Licensure.

The hospice and all hospice employees must be licensed in accordance with applicable State and local laws and regulations.

(a) *Standard: Licensure of program.* If State or local law privides for licensing of hospices, the hospice must be licensed.

(b) *Standard: Licensure of employees.* Employees who provide services must be licenced, certified or registered in accordance with applicable State laws.

§ 418.74 Condition of participation—Central clinical records.

In accordance with accepted prinicples of practice, the hospice must establish and maintain a clinical record for every individual receiving care and services. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval.

(a) *Standard: Content.* Each clinical record is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the staff providing the services. The record includes all services whether furnished directly or under arrangements made by the hospice. Each individual's record contains—

(1) The initial and subsequent assessments;

(2) The plan of care;

(3) identification data;

(4) Consent and authorization and election forms;

(5) Pertinent medical history; and

(6) Complete documentation of all services and events (including evaluations, treatments, progress notes, etc.).

(b) *Standard: Protection of information.* The hospice must safeguard the clinical record against loss, destruction and unauthorized use.

Core Services

§ 418.80 Condition of participation—Core services.

A hospice must ensure that substantially all the core services described in §§ 418.82–418.88 are routinely provided directly by hospice employees. A hospice may use contracted staff if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet the requirements specified in §§418.82–418.88.

§ 418.82 Conditions of participation—Nursing services.

The hospice must provide nursing care and services by or under the supervision of a registered nurse.

(a) Nursing services must be directed and staffed to assure that the nursing needs of patients are met.

(b) Patient care responsibilities of nursing personnel must be specified.

(c) Services must be provided in accordance with recognized standards of practice.

§ 418.84 Condition of participation—Medical social services.

Medical social services must be provided by a qualified social worker, under the direction of a physician.

§ 418.86 Conditions of participation—Physician services.

Physician employees of the hospice, including the physician member(s) of the interdisciplinary group, must care for the general medical needs of the patients for palliation and management of terminal illness and related conditions.

§ 418.88 Condition of participation—Counseling services.

Counseling services must be available to both the individual and the family. Counseling includes bereavement counseling, dietary, spiritual and any other counseling services for the individual and family while the individual is enrolled in the hospice.

(a) *Standard: Bereavement counseling.* There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, as well as a clear delineation of services to be provided and the frequency of service delivery (up to one year following the death of the patient). Special coverage requirements for bereavement counseling are described in § 418.204(c).

(b) *Standard: Dietary counseling.* Dietary counseling, when required, must be provided by a qualified individual.

(c) *Standard: Spiritual counseling.* Spiritual counseling must include notice to patients as to the availability of clergy as provided in § 418.70(g).

Other Services

§ 418.90 Condition of participation—Other services.

A hospice must ensure that the services described in §§ 418.92–418.98 are provided directly by hospice employees or under arrangements made by the hospice as specified in § 418.56

§ 418.92 Condition of participation—Physical therapy, occupational therapy, and speech-language pathology.

Physical therapy services, occupational therapy services, and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

§ 418.94 Condition of participation—Home health aide and homemaker services.

Home health aide and homemaker services must be available and adequate in number to meet the needs of the patients. A home health aide is a person who meets the training, attitude and skill requirements specified in § 405.1227 of this chapter.

(a) *Standard: Supervision.* Aide services must be provided under the general supervision of a registered nurse who makes a supervisory visit to the home site at least every 2 weeks to assess relationships and determine whether goals are being met.

(b) *Standard: Duties.* Written instructions for patient care are prepared by a registered nurse. Duties include, but may not be limited to, the duties specified in § 405.1227(a) of this chapter.

§ 418.96 Condition of participation—Medical supplies.

Medical supplies and appliances, including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness and related conditions. All drugs and biologicals must be administered in accordance with acceptable standards of practice.

(a) *Standard: Orders for medications.* (1) A physician must call all medications for the patient.

(2) If the medication order is given orally—

(i) The physician must give it only to a licensed nurse, pharmacist, or another physician; and

(ii) The individual receiving the order must record and sign it immediately and the prescribing physician must sign it in a manner consistent with good medical practice.

(b) *Standard: Administration of pharmaceuticals.* Pharmaceuticals are administered only by the following individuals:

(1) A licensed nurse or physician.

(2) An employee who has completed a State-approved training program in medication administration.

(3) The patient if his or her attending physician has approved.

(c) *Standard: Drug records and disposition.* Records of the receipt and disposition of all controlled drugs furnished by the hospice are maintained to enable an accurate reconciliation.

(d) *Standard: Drug storage and security.* Drugs are stored in locked compartments under proper temperature controls and only authorized staff have access to the keys.

(e) *Standard: Drug disposal.* Controlled drugs no longer needed by

the patient, whether maintained in the home or in the hospice, are disposed of in compliance with State requirements. In the absence of State requirements, two hospice employees destroy the drugs and prepare a record of the disposal.

§ 418.98 Condition of participation—Short term inpatient care.

Inpatient care must be available for pain control, symptom management and respite purposes.

(a) *Standard: Inpatient care.* Inpatient care must be provided in one of the following participating Medicare or Medicaid facilities that is most appropriate to the needs of the individual:

(1) A hospice that meets the condition of participation for providing inpatient care directly as specified in § 418.100.

(2) A hospital, an SNF, or an ICF that also meets the standards specified in § 418.100(a) and (f) regarding staffing and patient areas.

(b) *Standard: Inpatient care limitation.* Except as provided in paragraph (c) of this section, the total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in any 12-month period preceding a certification survey in a particular hospice may not exceed 20 percent of the total number of hospice days for this group of beneficiaries.

(c) *Standard: Exemption from limitation.* Until October 1, 1986, any hospice that began operation before January 1, 1975 is not subject to the limitation specified in paragraph (b).

Freestanding Hospice with Inpatient Unit

§ 418.100 Condition of participation for freestanding hospices providing inpatient care directly.

A freestanding hospice that provides inpatient care directly must comply with the following standards.

(a) *Standard: Staffing.* (1) The hospice must have staff on duty 24 hours a day sufficient in number and qualifications to carry out the policies—and responsibilities of the hospice.

(2) Each shift must include a registered nurse who provides direct patient care; except that in the case of respite care, a registered nurse is necessary only during the day shift.

(3) During each shift, every patient must be under the direct care of a registered nurse or a licensed practical nurse.

(b) *Standard: Emergencies.* The hospice must—

(1) Have a written plan for staff and patients to follow in case of an emergency such as a fire or an explosion and rehearse the plan regularly; and

(2) Have written procedures for the staff to follow in case of an emergency involving a patient. These emergency procedures must include directions for—

(i) Caring for the patient;

(ii) Notifying the attending physician and other individuals responsible for the patient, and

(iii) Arranging for transportation, hospitalization, or other appropriate services.

(c) *Standard: Health and safety laws.* The hospice must meet all Federal, State, and local laws, regulations, and codes pertaining to health and safety, such as provisions regulating—

(1) Construction, maintenance, and equipment for the hospice

(2) Sanitation;

(3) Communicable and reportable diseases; and

(4) Post mortem procedures.

(d) *Standard: Fire protection.* Except as provided in paragraph (e) of this section, the hospice must meet the health care occupancy provisions of the 1981 edition of the Life Safety Code of the National Fire Protection Association which is incorporated by reference [1]

(e) *Standard: Fire protection waivers.* (1) In consideration of a recommendation by the State survey agency, HCFA may waive specific provisions of the Life Safety Code required by paragraph (d) of this section, for as long as it considers appropriate, if—

(i) The waiver would not adversely affect the health and safety of the patients; and

(ii) Rigid application of specific provisions of the Code would result in unreasonable hardship for the hospice.

(2) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type or height, may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code)—

(A) Type II (1, 1, 1)—protected noncombustible;

(B) Fully sprinklered Type II (0, 0, 0)—noncombustible

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary;

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES) or FSES/Board and Care.

[1] See footnote to § 405.1022(b) of this chapter.

(f) *Standard: Patient areas.* (1) the hospice must design and equip areas for the comfort and privacy of each patient and family members.

(2) In areas that are designated for hospice care, the hospice must have—

(i) Physical space for private patient/family visiting;

(ii) Accommodations for family members to remain with the patient throughout the night;

(iii) Accommodations for family privacy after a patient's death;

(iv) Decor which is homelike in design and function; and

(v) Oxygen must be available for patients, as needed.

(3) Patients must be permitted to receive visitors, including small children.

(g) *Standard: Patients' rooms.* (1) Each patient's room must—

(i) Be equipped with or conveniently located near toilet and bathing facilities;

(ii) Be at or above grade level;

(iii) Contain a suitable bed for each patient and other appropriate furniture;

(iv) Have closet space that provides security and privacy for clothing and personal belongings;

(v) Contain no more than four beds;

(vi) Measure at least 100 square feet for a single patient room or 80 square feet for each patient for a multipatient room; and

(vii) Be equipped with a device for calling the staff member on duty.

(2) For an existing building, HCFA may waive the space and occupancy requirements of paragraphs (g)(1) (v) and (vi) of this section for as long as it is considered appropriate if it finds that—

(i) The requirements would result in unreasonable hardship on the hospice if strictly enforced; and

(ii) The waiver serves the particular needs of the patients and does not adversely affect their health and safety.

(h) Standard: Bathroom facilities. The hospice must—

(1) Provide an adequate supply of hot water at all times for patient use; and

(2) Have plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by patients.

(i) Standard: Linen supplies. The hospice must have available at all times enough linen for the proper care and comfort of the patients and have clean linen on each bed.

(j) Standard: Isolation areas. The hospice must make provision for isolating patients with infectious diseases.

(k) Standard: Dining, recreation and social rooms. The hospice must provide one or more areas, not used for corridor

traffic, for dining, recreation, and social activities.

(l) Standard: Meal service. The hospice must—

(1) Serve at least three meals or their equivalent each day at regular times, with not more than 14 hours between a substantial evening meal and breakfast;

(2) Procure, store, prepare, distribute, and serve all food under sanitary conditions; and

(m) Standard: Menu planning and supervision.

(1) The hospice must have a staff member trained or experienced in food management or nutrition who is responsible for—

(i) Planning menus that meet the nutritional needs of each patient, following the orders of the patient's physician and, to the extent medically possible, the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences (Recommended Dietary Allowances (9th ed., 1981) is available from the Printing and Publications Office, National Academy of Sciences, Washington, D.C. 20418); and

(ii) Supervising the meal preparation and service to insure that the menu plan is followed.

(2) If the hospice has patients who require medically prescribed special diets, the hospice must—

(i) Have the menus for those patients planned by a professionally qualified dietitian; and

(ii) Supervise the preparation and serving of meals to insure that the patient accepts the special diet.

(n) Standard: Licensed pharmacist. The hospice must—

(1) Employ a licensed pharmacist; or

(2) Have a formal agreement with a licensed pharmacist to advise the hospice on ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals.

(o) Standard: Orders for medications.

(1) A physician must order all medications for the patient.

(2) If the medication order is verbal—

(i) The physician must give it only to a licensed nurse, pharmacist, or another physician; and

(ii) The individual receiving the order must record and sign it immediately and have the prescribing physician sign it in a manner consistent with good medical practice.

(p) *Standard: Administering medications.* Medications are administered only by one of the following individuals:

(1) A licensed nurse or physician.

(2) An employee who has completed a State-approved training program in medication administration.

(3) The patient if his or her attending physician has approved.

(q) *Standard: Supervision.* The hospice must have a registered nurse to supervise the hospice health services full time, 7 days a week, on each shift.

Subpart D—Covered Services

§ 418.200 Requirements for coverage.

To be covered, hospice services must be reasonable and necessary for the palliation or management of the terminal illness as well as related conditions. The individual must elect hospice care in accordance with § 418.24 and a plan of care must be established as set forth in § 418.58 before services are provided. To be covered, services must be consistent with the plan of care. A certification that the individual is terminally ill must be completed as set forth in § 418.22.

§ 418.202 Covered services.

All services must be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

(a) Nursing care provided by or under the supervision of a registered nurse.

(b) Medical social services provided by a social worker under the direction of a physician.

(c) Physicians' services performed by a physician as defined in § 405.232a of this chapter except that the services of the hospice medical director or the physician member of the interdisciplinary group must be performed by a doctor of medicine or osteopathy.

(d) Counseling services provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other care-giver to provide care, and for the purpose of helping the individual and those caring for him or her to adjust to the individual's approaching death.

(e) Short-term inpatient care provided in a participating hospice inpatient unit, or a participating hospital, SNF, or ICF that additionally meets the standards in § 418.100 (a) and (f) regarding staffing and patient areas. Services provided in an inpatient setting must conform to the written plan of care. Inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management.

Inpatient care may also be furnished as a means of providing respite for the individual's family or other persons caring for the individual at home. Payment for inpatient care will be made at the rate appropriate to the level of care as specified in § 418.302.

(f) Medical appliances and supplies, including drugs and biologicals. Only drugs as defined in section 1861(t) of the Act and which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered. Appliances may include covered durable medical equipment as described in § 405.231(g) of this chapter as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness. Equipment is provided by the hospice for use in the patient's home while he or she is under hospice care. Medical supplies include those that are part of the written plan of care.

(g) Home health aide services furnished by qualified aides as designated in § 418.94 and homemaker services. Home health aides may provide personal care services as described in § 405.127(d) of this chapter. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Aide services must be provided under the general supervision of a registered nurse. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the treatment plan.

(h) Physical therapy, occupational therapy and speech-language pathology services in addition to the services described in § 405.127(c) of this chapter provided for purposes of symptom control or to enable the patient to maintain activities of daily living and basic functional skills.

§ 418.204 Special coverage requirements.

(a) *Periods of crisis.* Nursing care may be covered on a continuous basis for as much as 24 hours a day during periods of crisis as necessary to maintain an individual at home. Either homemaker or home health aide services or both may be covered on a 24-hour continuous basis during periods of crisis but care during these periods must be predominantly nursing care. A period of crisis is a period in which the individual requires continuous care to achieve

palliation or management of acute medical symptoms.

(b) *Respite care.* (1) Respite care is short-term inpatient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

(2) Except as provided in paragraph (b)(3), respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time.

(3) Until October 1, 1986, any hospice that began operation before January 1, 1975 is not subject to the limitation on the frequency and number of respite care days.

(c) *Bereavement counseling.* Bereavement counseling is a required hospice service but it is not reimbursable.

Subpart E—Reimbursement Methods

§ 418.301 Reimbursement for hospice care.

(a) Medicare payment for covered hospice care is made in accordance with the method set forth in § 418.302.

(b) Medicare reimbursement to a hospice in a cap period is limited to an amount determined in accordance with § 418.309.

§ 418.302 Payment procedures for hospice care.

(a) HCFA establishes payment amounts to reimburse specific categories of covered hospice care.

(b) Payment amounts are determined within each of the following categories:

(1) *Routine home care day.* A routine home car day is a day on which an individual who has elected to receive hospice care is at home and is not receiving continuous care as defined in paragraph (b)(2) of this section.

(2) *Continuous home care day.* A continuous home care day is a day on which an individual who has elected to receive hospice care is not in an inpatient facility and receives hospice care consisting predominantly of nursing care on a continuous basis at home. Home health aide or homemaker services or both may also be provided on a continuous basis. Continuous home care is only furnished during brief periods of crisis as described in § 418.204(a) and only as necessary to maintain the terminally ill patient at home.

(3) *Inpatient respite care day.* An inpatient respite care day is a day other than an inpatient care day on which the individual who has elected hospice care receives care in an approved facility on a short-term basis for respite.

(4) *General inpatient care day.* A general inpatient care day is a day on which an individual who has elected hospice care receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings.

(c) The payment amounts for the categories of hospice care are fixed payment rates that are calculated by HCFA in accordance with the procedures described in § 418.306. Payment rates are determined for the following categories:

(1) Routine home care.

(2) Continuous home care.

(3) Inpatient respite care.

(4) General inpatient care.

(d) The intermediary reimburses the hospice at the appropriate payment amount for each day for which an eligible Medicare beneficiary is under the hospice's care.

(e) The intermediary makes payment according to the following procedures:

(1) Payment is made to the hospice for each day during which the beneficiary is eligible and under the care of the hospice, regardless of the amount of services furnished on any given day.

(2) Payment is made for only one of the categories of hospice care described in § 418.302(b) for any particular day.

(3) On any day on which the beneficiary is not an inpatient, the hospice is paid the routine home care rate, unless the patient receives continuous care as defined in paragraph (b)(2) of this section for a period of at least 8 hours. In that case, a portion of the continuous care day rate is paid in accordance with paragraph (4) of this section.

(4) The continuous home care day rate is divided into 3 portions. The hospice payment on a continuous care day varies depending on the length of continuous services provided, as follows—

(i) For 8 up to 16 hours of care, the hospice is paid one-half the rate;

(ii) For 16 up to 20 hours of care, the hospice is paid three-fourths of the rate; and

(iii) For 20 through 24 hours of care, the hospice is paid eleven-twelfths of the continuous care day rate.

(5) Subject to the limitations described in paragraph (f) of this section, on any day on which the beneficiary is an inpatient in an approved facility for inpatient care, the appropriate inpatient rate (general or respite) is paid depending on the category of care furnished. The inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the patient is discharged. For the day of discharge, the appropriate home care rate is paid unless the patient dies as an inpatient. In the case where the beneficiary is discharged deceased, the inpatient rate (general or respite) is paid for the discharge day. Payment for inpatient respite care is subject to the requirement that it may not be provided consecutively for more than 5 days at a time. Payment for the sixth and any subsequent day of respite care is made at the routine home care rate.

(f) Payment for inpatient care is limited as follows: (1) That Total payment to the hospice for inpatient care (general or respite) is subject to a limitation that total inpatient care days for Medicare patients not exceed 20 percent of the total days for which these patients had elected hospice care.

(2) At the end of a cap period, the intermediary calculates a limitation on payment for inpatient care to ensure that Medicare payment is not made for days of inpatient care in excess of 20 percent of the total number of days of hospice care furnished to Medicare patients.

(3) If the number of days of inpatient care furnished to Medicare patients is equal to or less than 20 percent of the total days of hospice care to Medicare patients, no adjustment is necessary. Overall payments to a hospice are subject to the cap amount specified in §418.309.

(4) If the number of days of inpatient care furnished to Medicare patients exceeds 20 percent of the total days of hospice care to Medicare patients, the total payment for inpatient care that was made is multiplied by the proportion of the maximum number of allowable inpatient care days to the actual number of inpatient care days furnished by the hospice to Medicare patients. This amount is compared to actual payments for inpatient care, and any excess reimbursement must be refunded by the hospice. Overall payments to the hospice are subject to the cap amount specified in § 418.309.

§ 418.304 Payment to the hospice for physician services.

(a) The following service perfomed by hospice physicians are inluded in the rates described in § 418.302:

(1) General supervisory services of the medical director.

(2) Interdisciplinary group services of the interdisciplinary group physician member.

(b) The carrier pays the hospice an amount equivalent to 100 percent of the physician's reasonable charge for those physician services furnished by hospice employees or under arrangements with the hospice. Reimbursement for these

physician services is included in the amount subject to the hospice payment limit described in § 418.309. Services furnished voluntarily by physicians are not reimbursable.

(c) Services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangements with the hospice, are not considered hospice services and are not included in the amount subject to the hospice payment limit described in § 418.309. These services are paid by the carrier under the procedures in Subparts D or E, Part 405 of this chapter.

§ 418.306 Determination of the payment rates.

(a) HCFA calculates payment rates for each of the categories of hospice care described in § 418.302(c).

(b) Each rate is equal to a prospectively determined amount which HCFA estimates equals the costs incurred by hospice generally in efficiently providing that type of hospice care to Medicare beneficiaries.

(c) The rates are adjusted by the intermediary to reflect local differences in wages.

(d) HCFA will publish as a notice in the **Federal Register** any proposal to change payment rates or the methodology for determining those rates.

§ 418.308 Limitation on the amount of hospice payments.

(a) Except as specified in paragraph (b) of this section, the total Medicare payment to a hospice for care furnished during a cap period is limited by the hospice cap amount that is determined in accordance with § 418.309.

(b) Until October 1, 1986, payment to a hospice that began operation before January 1, 1975 is not limited by the amount of the hospice cap described in § 418.309.

(c) The intermediary notifies the hospice of the determination of program reimbursement at the end of the cap year in accordance with procedures similar to those described in 42 CFR 405.1803.

(d) Payments made to a hospice during cap period that exceed the cap amount are overpayments and must be refunded.

§ 418.309 Determination of the hospice cap amount.

The hospice cap amount is calculated using the following procedures:

(a) HCFA calculates the national average Medicare per capita expenditure for the last six months of life for beneficiaries whose primary cause of death was cancer. This figure is determined using data from a base year established by HCFA.

(b) Using an index that relates the level of Medicare expenditures in a region to the national level, HCFA calculates a regional average Medicare per capita expenditure for each region based on the national average. (NOTE: final rule will define region and describe the method of indexing.)

(c) The regional per capita expenditure calculated under paragraph (b) of this section is adjusted for deflation or inflation using the percentage change in the consumer price index (CPI) for medical care expenditures for urban consumers that is published by the Bureau of Labor Statistics. This adjustment is made using the change in the CPI from the fourth month of the base year to the fifth month of the cap years. The cap year runs from November 1 of each year until October 31 of the following year.

(d) Each hospice's cap amount is calculated by the intermediary by multiplying 40 percent of the adjusted regional per capita expenditure amount (as determined in paragraph (c) of this section) by the number of Medicare beneficiaries who elected to receive hospice care from that hospice during the cap period. For purposes of this calculation, the number of Medicare beneficiaries includes—

(1) Those Medicare beneficiaries who have not previously been included in the calculation of any hospice cap and who have filed an election to receive hospice care, in accordance with §418.24, from the hospice during the period beginning on October 10 (22 days before the beginning of the cap period) and ending on October 9 (22 days before the end of the cap period).

(2) In the case in which a beneficiary has elected to receive care from more than one hospice, each hospice includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total stay in all hospices that was spend in that hospice. (The hospice can obtain this information by contacting the intermediary.)

§ 418.310 Reporting and recordkeeping requirements.

Hospices must provide reports and keep records as the Secretary determines necessary to administer the program.

§ 418.311 Administrative appeals.

A hospice that believes its payments have not been properly determined in accordance with these regulations may request a review from the intermediary or the Provider Reimbursement Review Board (PRRB). In such a case, the procedure in 42 CFR Part 405, Subpart R, will be followed to the extent that it is applicable. The PRRB, subject to review by the Secretary under § 405.1874 of this chapter, shall have the authority to determine the issues raised.

Subpart F—Coinsurance

§ 418.400 Individual liability for coinsurance for hospice care.

An individual who has filed an election for hospice care in accordance with § 418.24 is liable for the following coinsurance payments. Hospices may charge individuals the applicable coinsurance amounts.

(a) *Drugs and biologicals.* An individual is liable for a coinsurance payment for each palliative drug and biological prescription furnished by the hospice while the individual is not an inpatient. The amount of coinsurance for each prescription approximates 5 percent of the cost of the drug or biological to the hospice determined in accordance with the drug copayment schedule established by the hospice, except that the amount of coinsurance for each prescription may not exceed $5. The cost of the drug or biological may not exceed what a prudent buyer would pay in similar circumstances. The drug copayment schedule must be reviewed for reasonableness and approved by the intermediary before it is used.

(b) *Respite care.* The amount of coinsurance for each respite care day is equal to 5 percent of the payment made by HCFA for a respite care day.

(2) The amount of the individual's coinsurance liability for respite care during a hospice coinsurance period may not exceed the inpatient hospital deductible applicable for the year in which the hospice coinsurance period began.

(3) The individual hospice coinsurance period—

(i) Begins on the first day an election filed in accordance with § 418.24 is in effect for the beneficiary; and

(ii) Ends with the close of the first period of 14 consecutive days on each of which an election is not in effect for the beneficiary.

§418.402 Individual liability for services that are not considered hospice care.

Medicare payment to the hospice discharges an individual's liability for payment for all services, other than the hospice coinsurance amounts described in § 418.400, that are considered covered hospice care (as described in § 418.202). The individual is liable for the Medicare deductibles and coinsurance payments and for the difference between the

reasonable and actual charge on unassigned claims on other covered services that are not considered hospice care. Examples of services not considered hospice care include: services furnished before or after a hospice election period; services of the individual's attending physician, if the attending physician is not an employee of or working under an arrangement with the hospice; or Medicare services received for the treatment of an illness or injury not related to the individual's terminal condition.

§ 418.405 Reduction of Medicare reimbursement by individual coinsurance liability.

The Medicare payment rates established by HCFA in accordance with §418.306 are not reduced when the individual is liable for coinsurance payments. Instead, when determining the payment rates, HCFA offsets the estimated cost of services by an estimate of average coinsurance amounts hospices collect.

PART 420—PROGRAM INTEGRITY

The authority citation for Part 420 reads as follows:

Authority: Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2)(D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)).

I. Part 420 is amended as follows:

1. In Subpart A, § 420.2 is amended by revising the definition of "Provider" to read as follows:

Subpart A—General Provisions

* * * * *

§ 420.2 Definitions.

* * * * *

"Provider" means a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement, but only to furnish outpatient physical therapy or speech pathology services.

* * * * *

2. In Subpart D, § 420.301, the introductory language is reprinted and the definition of "Provider" is revised to read as follows:

Subpart D—Access to Books, Documents, and Records of Subcontractors

* * * * *

§ 420.301 Definitions.

For purposes of this subpart—

* * * * *

"Provider" means a hospital, skilled nursing facility, home health agency, or comprehensive outpatient rehabilitation facility, a hospice, or a related organization (as defined in § 405.427 of this chapter) of any of these providers.

* * * * *

PART 421—INTERMEDIARIES AND CARRIERS

J. Part 421 is amended as follows:

1. The Table of Contents is amended by revising the title of § 421.117 to read as follows:

* * * * *

Sec.

421.117 Designation of intermediaries for freestanding home health agencies and hospices.

* * * * *

Authority: Secs. 1102, 1815, 1816, 1842, 1861(u), 1871, 1984 and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395–1.

2. Section 421.3 is amended by revising the definitions of "Intermediary" and "Provider" to read as follows:

§ 421.3 Definitions.

* * * * *

"Intermediary" means an organization that has entered into an agreement with the Administrator to perform designated functions in the administration of the Medicare program.

For purposes of designating intermediaries for freestanding home health agencies and hospices under § 421.117 as well as for applying the performance criteria in § 421.120 and the statistical standards in § 421.122 and any adverse action resulting from such application, the term intermediary also means a Blue Cross Plan which has entered into a subcontract approved by the Administrator with the Blue Cross Association to perform intermediary functions.

"Provider" means a hospital, skilled nursing facility (SNF), home health agency (HHA), hospice, comprehensive outpatient rehabilitation facility, or a provider of outpatient physical therapy or speech pathology services under the Medicare program.

* * * * *

3. Section 421.103 is revised to read as follows:

§ 421.103 Option available to providers.

Except for hospices (which are covered under § 421.117), a provider may elect to receive payment for covered services furnished to Medicare beneficiaries:

(a) Directly from the Administrator, or

(b) Through an intermediary, when both the Administrator and the intermediary consent.

4. Section 421.104 is amended by revising paragraph (a)(1) to read as follows:

§ 421.104 Nominations for intermediary.

(a) *Nomination by groups or associations of providers.* (1) An association of providers, except for hospices, may nominate an organization or agency to serve as intermediary for its members.

* * * * *

5. Section 421.106 is amended by revising the introductory material in paragraph (a) to read as follows:

§ 421.106 Change to another intermediary or to direct payment.

(a) Any provider, except for a hospice, may request a change of intermediary, or that it be paid directly by the Administrator, by

* * * * *

6. Section 421.117 is amended by revising the title and paragraph (a), and by adding a new paragraph (c) to read as follows:

§ 421.117 Designation of intermediaries for freestanding home health agencies and for hospices.

(a) This section is based on section 1816(e)(4) of the Social Security Act, which requires the Secretary to designate regional intermediaries for freestanding home health agencies (HHAs) and on section 1816(e)(5) of the Social Security Act, which requires the Secretary to designate intermediaries for hospices.

* * * * *

(c) Except for certain hospice physician services, which generally are reimbursed by carriers, hospices receive payment for covered services furnished to Medicare beneficiaries in accordance with the following:

(1) Freestanding hospices receive payment through an intermediary designated by HCFA.

(2) Except as described in paragraph (c)(3), hospices that are subdivisions of other Medicare providers receive payment through the same intermediary that serves their parent provider.

(3) A hospice whose parent provider is served by HCFA receives payment through an intermediary designated by HCFA.

7. Section 421.128 is amended by revising paragraph (f) to read as follows:

§ 421.128 Intermediary's opportunity for a hearing and right to judicial review.

* * * * *

(f) Exception. An intermediary adversely affected by the designation of an intermediary under § 421.117 of this subpart is not entitled to a hearing or judicial review concerning adverse effects caused by the designation of an intermediary.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

The authority citation for Part 489 reads as follows:

Authority: Sec. 1102, 1814(a) and 1866, Social Security Act (42 U.S.C. 1302, 1395f(a) and 1395cc).

K. Part 489 is amended as follows:

1. Section 489.2 is amended by adding a new paragraph (b)(6) to read as follows:

§ 489.2 Scope of part.

* * * * *

(b) The following providers are subject to the provisions of this part:

* * * * *

(6) Hospices.

2. Section 489.55 is amended by revising paragraph (b) to read as follows:

§ 489.55 Exceptions to effective date of termination.

* * * * *

(b) In the case of home health services furnished under a plan of treatment or hospice care furnished under a plan of care established before the effective date, payment may be made for services furnished through the end of the calendar year in which termination is effective.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance)

Dated: August 3, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 16, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-22904 Filed 8-18-83; 8:45 am]

BILLING CODE 4120-03-M

federal register

Monday
August 22, 1983

Part III

Environmental Protection Agency

Allegations That Chemical Substances Cause Significant Adverse Reactions to Health or the Environment; Recordkeeping and Reporting Procedures

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 717

[OPTS-83001B; TSHFRL 2378-7]

Records and Reports of Allegations That Chemical Substances Cause Significant Adverse Reactions to Health or the Environment; Recordkeeping and Reporting Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule implements section 8(c) of the Toxic Substances Control Act (TSCA). The rule requires manufacturers and certain processors of chemical substances and mixtures to keep records of significant adverse reactions to health or the environment alleged to have been caused by a substance or mixture. EPA may also inspect and require reporting of such records.

EFFECTIVE DATE: 30 days after OMB provides the Control Number but no sooner than September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.: (554-1404), outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 8(c) of the Toxic Substances Control Act requires that "any person who manufactures, processes, or distributes in commerce any chemical substance or mixture" must keep "records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture." Section 8(c) requires that allegations of adverse reactions to the health of employees be kept for 30 years, and all other allegations be kept for five years. EPA may inspect these records and require submission of copies of such records. EPA proposed a rule to implement section 8(c) of TSCA, which was published in the **Federal Register** of July 11, 1980 (45 FR 47008). Approximately 160 written comments were received on the proposal and public meetings were held in Washington, D.C., Newark, N.J., and Houston, Texas.

This preamble explains the final rule's provisions and addresses by topic the changes made from the proposal. A separate document titled "Responses to Individual Comments" presents EPA's responses to individual, substantive comments. This document is available to the public in the administrative record of this rulemaking.

After considering the comments, the Agency in this final rule has changed certain provisions of the proposed rule, clarified others and significantly reduced the number of firms subject to recordkeeping and reporting provisions as proposed. These changes will improve the quality and accessibility of records kept and will focus the recordkeeping responsibility on those firms generally recognized to be part of the chemical industry.

A. Purpose of the Rule

The rule defines "significant adverse reactions" to chemical substances and mixtures and establishes a system of recordkeeping and reporting that will:

1. Create a historical record of significant adverse reactions alleged to have been caused by substance or mixture. EPA can examine such records whenever a chemical is discovered to present possible risks to human health or the environment.

2. Provide a means to identify previously unknown chemical hazards and to reveal patterns of adverse effects that might otherwise either not be noticed or go undetected for long periods of time.

B. Outline of Rule Provisions

Key provisions of the final rule are as follows:

1. The definition of "significant adverse reactions" places an increased emphasis on reactions that impair normal activities of humans or other organisms in the environment. Reactions that are "known human effects" do not have to be recorded. Also exempt from recording are environmental reactions directly attributable to spills or other incidents that have been reported to the Federal government.

2. Firms subject to the rule include manufacturers of chemical substances. Such manufacturers are also responsible for collecting allegations relating to their processing activities and distribution in commerce activities. Processors, that are not also manufacturers, are subject to the rule if they are engaged in activities described in Standard Industrial Classification (SIC) codes 28 or 2911.

3. A retailer is exempt from this rule unless it is also a manufacturer or a processor subject to the rule. A firm whose sole activity is the distribution of chemical substances, (i.e., a distributor that is not also a manufacturer or a processor) is exempt. Also exempt are manufacturers or manufacturing sites whose only activity involves mining or other extractive industry functions.

4. Firms are required to keep written and signed allegations. A firm must also record an oral allegation unless the firm requests the alleger to submit the allegation in writing.

5. Records of allegations received at any applicable plant site are to be kept at the company's headquarters or at a location central to its chemical operations.

6. No automatic reporting provision is included in the rule. Required reporting of any records kept under this rule will be by letter or by notice in the **Federal Register.**

II. Significant Adverse Reactions

A. Proposed Definition and Comments

The key element in this regulation is the definition of significant adverse reactions. The objective of the definition is to establish a file of significant adverse reactions that can be useful in finding unexpected or unrecognized problems.

The core of the definition of significant adverse reactions in the proposed rule read as follows:

> Significant adverse reactions are reactions that may indicate a tendency of a chemical substance or mixture to cause long-lasting or irreversible damage to health or the environment * * *.

The proposed definition then listed certain examples or "indicators" of both health and environmental effects that should be considered significant.

The human health indicators in the proposed definition further defined "significant" as a function of the reaction's duration or persistence after cessation of exposure. But, the proposal specifically attempted to avoid requiring recordkeeping of "one-time" reactions. Therefore, a reaction that did not persist beyond the period of exposure would be considered significant only if it were experienced repeatedly upon exposure. These indicators were developed in response to the following language in the Conference Report on section 8(c) of TSCA:

> The seriousness, duration, and the frequency of reactions should be taken into account in establishing what constitutes a significant adverse reaction. For example, if an individual reports that a chemical substance causes his or her eyes to become inflamed and to tear, such reaction may be attributed to an isolated allergic reaction. However, if several persons report a similar reaction, then the reaction may indeed be significant. Because the ultimate significance of adverse reactions is difficult to predict, the

conferees intend that the requirement to retain records err on the side of safety. Some very serious neurological disorders, for instance, at first present what appear to be trifling symptoms. (Toxic Substances Control Act, Conference Report, H.R. Rep. No. 94-1679, 94th Cong., 2d Sess. 81 (1976).)

Indicators of significant environmental reactions centered on gradual or sudden changes in the composition of plant or animal life in an area.

The Agency received a substantial number of comments on the definition of significant adverse reactions. A majority of the comments from chemical companies and industry groups criticized the definition as being too vague or too broad to be useful, targeting the phrase "may indicate a tendency" as the major cause of this ambiguity. There was also criticism that the human health indicators did not accomplish the purpose of eliminating the recording of one-time effects. The concepts of duration of the reaction or persistence beyond cessation of exposure were also criticized, especially because examples such as headache or nausea were used. Comments from industry claimed that such reactions are common in workers and not usually associated with effects of a long-lasting or irreversible nature, either actual or potential. These commenters recommended, instead, that the concept of serious impairment of normal activities be included in the definition; they also favored eliminating the human health indicators. On the other hand, environmental and labor groups criticized the proposed definition as being too restrictive. These commenters stated that this definition of health effects should be broadened to include serious one-time, short-lived, or reversible effects. In addition, these commenters objected to requiring recordkeepers to make a preliminary judgment about the long-lasting or irreversible nature of reported reactions.

Commenters also disagreed with regard to the environmental indicators. Certain commenters wanted them eliminated. They claimed that many of the indicators could reflect adverse effects caused by natural or seasonal changes (e.g. fish kills due to natural algal blooms) which might be wrongly ascribed to a substance, effluent, or process. However, environmental groups commented that the environmental indicators were not broad enough because they did not include damage to microbial life or the abiotic environment—air, soil, water, or man-made or man-modified structures.

B. The Final Definition

After careful consideration of the comments, the Agency made certain modifications in the structure, emphasis, and application of the definition of significant adverse reactions.

The final definition reads as follows:

Significant adverse reactions are reactions that may indicate a substantial impairment of normal activities, or long-lasting or irreversible damage to health or the environment.

The Agency agreed with comments that the definition needs to state more directly the Agency's concept of what adverse reactions are significant. Toward this end the Agency removed from the definition the modifying phrase "a tendency of a chemical substance or mixture to cause". In its place the definition contains a second descriptor of what is (or may be) significant, "a substantial impairment of normal activities". The Agency believes that these changes add clarity and give the final definition an additional dimension not possessed by the proposed definition. In terms of human health the concept of a substantial impairment of normal activities will, of course, encompass physically manifest damage, such as cancer, an organ dysfunction, a birth defect, or a neurological disorder. But, it can also include subjectively experienced adverse reactions that may not be physically verifiable but may presage a more serious effect. A substantial impairment of normal activities can also be an adverse environmental effect, e.g. reduced reproductive capabilities of a species, reduced agricultural productivity, or adverse behavioral alterations as observed by the alleger.

Recordkeepers must exercise a substantial amount of judgment when comparing allegations received (i.e. the stated adverse reaction within the allegation) to this definition. Therefore, the definition retains the qualifier "may indicate" in order to require recordkeepers to consider for inclusion in the file those reactions of an apparently less serious nature that could point toward a future or more serious, underlying effect. In this way EPA is satisfying the intent of Congress that "records err on the side of safety".

C. Reactions That Must Be Recorded

The Agency has removed the indicators of human health and environmental reactions from the definition of significant adverse reaction and modified them for use in a new section of the regulation—§ 717.12. Significant adverse reactions that must be recorded.

Paragraph (a) of § 717.12 lists four groups of reactions to human health. These are intended to provide examples of the range of reactions that should be considered "significant" and, thus, recorded. These types of reactions include:

1. Long-lasting or irreversible damage, such as cancer or birth defects.
2. Partial or complete impairment of bodily functions, such as reproductive disorders, neuorological disorders, or blood disorders.
3. An impairment of normal activities which is experienced by all or most of the persons exposed at one time.
4. An impairment of normal activities which is experienced each time an individual is exposed.

It is not difficult to classify physically manifest reactions such as cancer, birth defects or reproductive disorders as significant adverse reactions. These reactions meet the criteria of long-lasting or irreversible damage, or impairment of normal activities.

It is more difficult to classify those reactions of an apparently less serious nature that may be indicators of future problems. The Agency cannot predict and list in this regulation all such reactions. Therefore, reactions covered by 3. and 4. above include two criteria. First, they involve an effect that impairs normal activities, which can include both job and non-job related activities. Second, these effects are repeatable. That is, effects have been experienced by a group of people (even if it involves only one incident), or the effect has been experienced by one person several times and such reaction involves the same chemical substance, mixture, process, or effluent. These recordable reactions may at first appear to be open-ended. However, as explained later in this preamble, the Agency has included a conditional exemption of known human effects. This exemption will, therefore, place a certain limitation upon the recordable nature of reactions that may fall into groups 3. and 4. above.

Environmental reactions that must be recorded are outlined in paragraph (c) of § 717.12. They are, for the most part, similar in wording to the environmental indicators in the proposal. However, the Agency did agree with comments that changes in the composition of fungal and microbial life in an area can signal the presence of a significant adverse ecological condition. Therefore, language has been added to the regulation to ensure that effects on these organisms are not ignored.

Also the Agency agreed with comments that long-lasting or irreversible contamination of the

physical environment, especially in the case of a ground water resource, is a significant adverse reaction to the environment that should be recorded. Contamination of physical environmental resources, especially those portions with a limited self-cleansing capability, can have unavoidable consequences for the dependent biota. Therefore the Agency believes that requiring companies to keep such allegations could alert both them and the Agency to previously undetected contamination or unexpected consequences of existing effluents. Any duplication or overlap with reports of spills or other incidents already reported to the Federal government will be avoided through an exemption discussed later in this preamble.

D. Exempting Known Human Effects

In connection with the definition itself, another major comment by many companies and industry groups promoted the concept of exempting "known effects" from the recordkeeping requirements of the rule. Commenters claimed that such an exemption would be the most effective way of supporting one of the purposes of the rule—the identification of previously unknown chemical hazards. The exemption of known effects, they asserted, would keep the section 8(c) files from becoming filled with information about reactions to substances that are already well characterized in the scientific literature or in reports to the Agency. Also, such an exemption would prevent duplicative recordkeeping. It would be consistent with similar provisions in the Agency's TSCA section 8(e) policy statement (43 FR 11110) and the enforcement policy statement regarding section 6(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (44 FR 40716).

After consideration of these comments, the Agency has determined that it is in keeping with the purpose of the rule to exempt known human effects from the recordkeeping requirements. The definition of known human effects (§ 717.3(c)) covers commonly recognized human health effects resulting from exposure to a substance as described in the scientific literature, in product labeling, or in material safety data sheets. However, the exemption would not apply if the reaction was a significantly more toxic effect than previously reported, or if the reaction resulted from a lower exposure level, a shorter exposure period, or a different exposure route than previously reported.

It must be emphasized that this exclusion applies strictly to effects observed in or known to occur in humans. Results of *in vitro* testing or animal testing related to the substance in question may not be considered the equivalent of a known human effect. For example, a company cannot decide to exclude from their records an allegation that a substance caused sterility in a worker solely because the scientific literature contains studies showing that the substance caused sterility in laboratory animals.

E. Exemption From Recording Environmental Effects

Commenters asserted that the Agency should exempt known environmental effects in the same way as known human effects. If the Agency were to allow such an exemption, we would want to apply similar caveats to it as are applied to the known human effects exemption. There are several differences, however. Allegations of adverse human health effects relate to one species and, often, will involve workers within a contained workplace where levels and types of exposure can be readily observed or quantified and compared with the literature. There are, however, many more variables involved in the case of environmental reactions. The problem becomes one of trying to fit an instance of environmental damage with reports in the literature. One would almost have to have a perfect match-up with the species of animals or plants affected, levels of exposure (if known) and numerous other variables in order to satisfy the caveats in the definition and reach a point where the exemption could be properly applied. Take, for example, a case in which an allegation states that use of substance x has adversely affected birds and certain livestock. If the literature cites only adverse effects of substance x on birds, then the exemption could not be applied because the effect on livestock is not also described.

However, an exemption from recording certain environmental reactions is included in paragraph (d) of § 717.12. This exemption is based more on the problem of duplication of recordkeeping and reporting requirements than it is on whether the reaction is "known" in the literature. A significant adverse reaction to the environment would not have to be recorded if the alleged cause is directly attributable to an incident of environmental contamination that has already been reported to the Federal government under any applicable authority.

III. Appropriate Allegations and Recordable Reactions

A. Written and Oral Allegations

The Agency received considerable comment about the appropriate format and content of allegations that must ultimately be recorded. One specific issue involved oral allegations. Most companies commenting opposed the concept of being required to record oral allegations. Their basic position is that if an allegation contains information of specific concern, that it is fair to require that it be written down and signed. Environmemtal groups and labor unions commented that the Agency should require recording of oral allegations, especially in the case of employees. Their contention was that a worker would be much more inclined to relate a problem orally to a supervisor than to commit such allegations to writing. However, one union representative was opposed to oral allegations because they would be transcribed by the company, with no review by the alleger.

EPA agrees that a written and signed allegation is a superior type of allegation to deal with under this rule. It expresses the circumstances of the significant adverse reaction in the alleger's own words. The fact that it is written and signed also attests to the alleger's own seriousness of concern about the reaction. However, the Agency is also concerned about the potential consequences of a criterion that would recognize only written allegations. The Agency would in no way intend that such a requirement become an excuse for ignoring problems brought to a company's attention orally.

Consequently, both written and oral allegations are subject to the rule. A company must take one of two actions with respect to oral allegations. It must transcribe the oral allegation into written form, or it must inform the alleger that his allegation may be recordable under this rule and request that he submit a written and signed allegation. It then becomes the responsibility of the alleger to provide the company with the allegation in written form. If the alleger does not respond to the company's request for a written allegation then the company is not obligated to take any further steps. By taking one of the two actions outlined above a firm will satisfy EPA's concern that the firm recognize oral allegations and take steps to consider such allegations for ultimate inclusion in their section 8(c) file.

A final point concerns which company official(s) shall be responsible for recognizing and dealing with oral

allegations. Commenters were opposed to having such company officials designated by rule, arguing that such a decision should be left up to the individual firms. EPA agrees that the company is in the best position to determine which of their officials shall be responsible for handling oral allegations. However, the Agency does want to make clear that it expects companies to educate their line supervisory personnel regarding oral allegations so that a worker who wishes to make such allegation does not have to seek out some unknown or far removed company official in order to have his allegation heard.

B. The Reaction's Cause

Another issue involved the stated cause of the reaction. The allegation must clearly state the alleged cause of the adverse reaction by naming or identifying one or more of the following: (1) a specific chemical substance or mixture (2) an article containing a substance (3) a company process or operation involving a substance, or (4) an effluent, emission, or other site discharge. Commenters objected to allegations being allowed to cite articles, processes or emissions, but the Agency retained these criteria because in many cases a worker, consumer, or plant neighbor may not know the name of a specific chemical or mixture that is the perceived cause of a reaction.

C. Alleger Feedback

EPA is not requiring firms to set up a formal alleger feedback program. However, the Agency strongly encourages firms to inform allegers regarding the ultimate disposition of their allegations. The Agency is aware that many firms have voluntarily developed such a feedback mechanism in connection with section 8(e) of TSCA. We encourage firms to implement similar practices of communication with persons submitting allegations that may be recordable under this rule.

D. Recordable Reactions

A firm may keep in its file any allegation received. However, a firm must at a minimum keep records of significant adverse reactions of the type outlined in § 717.12—Significant adverse reactions that must be recorded.

The criteria for both human health and environmental reactions have been discussed in Unit II of this preamble, along with the exemptions of known human effects and the exclusion for environmental reactions that have resulted from incidents previously reported to the Federal government.

In summary, all allegations received by a firm may not necessarily be recordable. The allegation must meet certain criteria of form and content. Then, the reaction cited must meet the definition of a significant adverse reaction and not be subject to the exemptions in § 717.12. A final factor, which will be discussed in detail in the next unit of this preamble, is that firms subject to the rule are required to collect (i.e. consider for recordkeeping) allegations only from certain chemical processing operations that they own or control.

E. Hypothetical Examples

The following hypothetical examples are presented in order to help illustrate the rule's provisions.

Hypothetical Examples

Fact situation	Recordable under section 8(c)?	Comment
(1) Several workers submit a report claiming that working around the chemical W gave them "blue lips".	No	"Blue lips" or methemoglobinemia is a known human effect of exposure to chemical W at the level and route of exposure experienced by the workers.
(2) One worker writes that whenever he is required to work around chemical W he has experienced severe nose bleeds.	Yes	Nose bleeds are not a commonly recognized reaction to chemical W exposure. The reaction is experienced each time the individual is exposed.
(3) A worker writes that on several occasions when he has worked with chemical X he has experienced tingling fingers and nausea. The literature states that these reactions are known to occur at exposure levels above 100 parts per million in the workplace air. However, the plant monitoring records show that levels of chemical X in the air do not exceed 20 parts per million.	Yes	Even though the reported reaction is a "known human effect" the worker seems to be repeatedly experiencing the reaction at a much lower exposure level than existing information indicates.
(4) On a day when the temperature was 96°F, a plant neighbor calls the company to complain that something in the air is making him sick. A company official asks that the allegation be submitted in writing but nothing is subsequently received.	No	The company chose to ask the alleger to submit this oral allegation in writing. Since nothing was received, no further action by the company is required.
(5) A farmer writes to a chemical plant that his farm pond seems to have become contaminated from the company's waste disposal facility located adjacent to his property. The farmer alleges that his cattle, whose only water source is this pond, have experienced several stillbirths and one case of deformed hooves. Sampling records of test wells at the facility showed no significant level of leachate.	Yes	The report cities reproductive disorders or birth defects in livestock alleged to have been caused by a "discharge" from a disposal facility. This may represent a hitherto undetected problem of environmental contamination.
(6) After beginning work on a new process involving chlorinated compounds, a worker alleged that she contracted painful sores on her face that lasted several days, causing her to miss work.	Yes	Even though an apparent on-time occurrence, the reaction was a substantial impairment of normal activities. Also, the reaction is suggestive of chloracne, an indicator of a potentially more serious effect.
(7) The family of a long-time company employee writes that they believe the employee's lung cancer was caused by his many years of work around chemical Y. The company health records show that the employee did not evidence adverse symptoms during his employment but he did smoke cigarettes. Chemical Y is, however, a suspected human carcinogen.	Yes	Even though chemical Y is a suspected human carcinogen the report cannot be excluded on this basis. Further, it cannot be excluded on the supposition that smoking was the sole cause of the cancer or that it may have enhanced the carcinogenic properties of chemical Y. The company may, however, place in the file evidence of the smoking as a potential mitigating factor.
(8) A consumer writes that she got a skin rash the first time she used the company's new detergent.	No	There is no evidence that the rash occurred repeatedly or that the product was used more than once. Also, there was no indication that the rash was an impairment of the consumer's normal activities.
(9) A consumer writes that even with proper ventilation (recommended), he got dizzy and nauseous the three times he used the company's furniture finish remover.	Yes	The repeated nature of the reaction makes it recordable along with the fact that the reaction was an apparent impairment of normal activities. The reaction apparently is not a "known human effect" under the exposure conditions associated with use in accordance with the product's labeling.
(10) A neighbor of a chemical plant writes that on May 15 he saw numerous dead fish as well as an oily film covering the water downstream from the plant. On May 13 the plant had experienced a ruptured wasteline pipe that allowed concentrated waste to enter the river. The spill was duly reported to the state and to EPA.	No	This environmental reaction appears to be directly attributable to an incident of environmental contamination already reported to EPA.

IV. Who Is Subject to the Rule

The proposed rule covered all manufacturers, processors, and distributors of chemical substances and mixtures. The Agency proposed to exempt retailers unless they were also a manufacturer or processor.

The Agency had to consider a number of factors in determining who should be subject to the final rule. First, there is the statutory language and Congressional intent. Section 8(c) states that "any person who manufactures, processes or distributes in commerce

any chemical substance or mixture shall maintain records * * *." Congress clearly intended for such recordkeeping requirements to be comprehensive and to encompass firms engaged in the production and the major distribution activities of the chemical industry.

However, during the development of the proposal it became apparent that there are many thousands of firms that can distribute or process a chemical substance in addition to those firms that are commonly associated with the chemical industry.

The Agency also considered for whom the section 8(c) records would have the most immediate value. Certainly, the records will be valuable to the Agency as it investigates specific substances or classes of substances. But, more importantly perhaps, the recordkeeping requirements will become an early warning system for companies regarding previously unrecognized problems with their products or processes. The question then becomes, "for which firms will these allegations have the most meaning?" The Agency believes that recordkeeping responsibility should be concentrated in the hands of those firms that will have the greatest ability and the most incentive to take corrective or preventive action with respect to a potentially harmful substance or mixture.

A. Manufacturers Subject to the Rule

The Agency has determined that this final rule shall apply to all persons who manufacture chemical substances, except for a narrow category as outlined in B. of this unit. More specifically, the rule applies to firms that manufacture, import, or produce any amount of a chemical substance or mixture for the purpose of obtaining an immediate or eventual commercial advantage.

The manufacturer category is the broadest category of firms subject to the rule. Certainly, most of these manufacturers will be companies primarily engaged in activities described in the Standard Industrial Classification (SIC) Major Group 28—Chemicals and Allied Products or SIC 2911—Petroleum Refining. However, numerous other firms produce, manufacture, or import chemicals. These firms may classify themselves in a primary SIC code other than in SIC 28 or 2911. This fact was made clear during reporting for the TSCA Inventory of Chemical Substances.

Therefore, a firm should review activities at all its plant sites to determine whether any chemical production, manufacture, or importation occurs. If so, such firm is subject to this rule as manufacturer, regardless of the primary SIC code under which it reports for the purposes of the periodic census.

As a manufacturer subject to this rule, a firm has the obvious responsibility to collect allegations regarding substances it manufactures. However, this firm must also collect allegations regarding certain chemical processing and distribution activities it may carry out. Therefore, the Agency believes that it is important to outline for manufacturers their comprehensive responsibilities for collecting allegations. This will be especially important direction for large, multi-industry firms.

A manufacturer must collect:

1. Any allegation identifying a chemical substance it manufactures (this includes, of course, any allegation identifying a company process or operation—see unit III. B. of this preamble and section 717.10 of the rule).

2. Any allegation identifying any of its own processing or distribution in commerce activities with respect to any chemical it manfuactures.

3. Any allegation identifying emissions, effluents, or other discharges from activities described above (again, see unit III. B. of this preamble).

Note that a manufacturer is responsible for any of its processing or distribution activities involving any chemical it manufactures. For any other chemical or mixture it may process, the company is treated just like any other person who processes chemicals manufactured by someone else. See unit C. regarding processors subject to this rule.

B. Manufacturers Not Subject to the Rule

The Agency has decided to exclude certain manufacturers and sites of manufacture from the requirements of this rule. Exempt are firms or sites whose sole business activities can be classified within the "extractive" industry. More specifically, exempt firms or sites are those whose sole business activities are to mine mineral ores, to extract petroleum or natural gas, to quarry non-metallic minerals (including extraction of salts from seawater or brines), to mine or otherwise extract coal, or to separate gases from the atmosphere. Firms or sites primarily engaged in activities of the type listed within SIC Division B—Mining, or SIC 2813—Industrial Gases, may be exempt from the requirements of this rule. By sole business activity the Agency means that no further processing or refinement of the extracted material occurs at the site. Such further processing or refinement is considered manufacturing subject to this rule. For example, the mining of oil shale ore is not subject to this rule but the retorting of the ore to produce shale oil is manufacturing subject to this rule.

This exemption is an administrative decision that is in part an outgrowth of the Agency's experience with the TSCA section 8(a) Preliminary Assessment Information rule (47 FR 26992). Persons who manufacture chemicals listed in that rule are required to report certain production-related information to the Agency. However, the rule exempts those who produce the substances only as part of mined substances of undefined or variable composition. Coverage by that rule begins with persons who process or refine the complex mixtures to produce a listed substance.

Technically, the act of extracting ore from the earth is "production" of a chemical substance. However, EPA considers that it would be both an inappropriate and an excessive regulatory burden to make the firms or sites solely engaged in extractive activities subject to the recordkeeping and reporting provisions of this rule. Several factors contributed to this decision.

First, the inclusion of firms in the extractive industry would affect many thousands of businesses, most of which are small, independent operations. Bureau of the Census statistics indicate that there are 22,358 firms in SIC Division B—Mining, a figure that is more than double the total number of firms that the Agency estimates will be subject to the rule as chemical manufacturers and processors. Census data show that of the total number of firms, approximately 21,000 are single unit operations that in total account for only 14 percent of sales within this industry group.

Second, the vast majority of substances produced by the extractive industry are substances that have been produced for many years. Consequently, a substantial volume of information has developed in the scientific and medical literature regarding the adverse effects of mined materials on health and the environment. This statement about such known effects is not meant to downplay the seriousness of occupational diseases such as black lung or asbestosis. It only means that, because these are known effects, they would not appear in a company's section 8(c) file were such firm subject to the rule. Therefore, the Agency considers it unreasonable to subject firms in the extractive industry to an additional recordkeeping requirement that may never see an entry.

Third, the Agency considers that for the purposes of this rule other federal regulatory activities adequately oversee occurrences of occupational illness within the extractive industry. Mine operators are currently required to keep records and to report instances of occupational injury and illness to the Mine Safety and Health Administration (30 CFR Subchapter M, Part 50). Producers of oil and natural gas are subject to similar regulations administered by the Occupational Safety and Health Administration.

Fourth, this exemption will not mean a loss of recordable allegations regarding extracted materials or the inability to obtain specific information as required. The Agency realizes that not all adverse effects of currently extracted materials may be known. It is also possible that previously undeveloped natural resources (e.g. oil shale) could present risks to health and the environment. However, any recordable significant adverse reactions to extracted materials are also likely to occur (perhaps even more likely to occur) during further processing or refinement steps. As stated above, such further processing or refinement is subject to this rule. Also, if necessary, the Agency can require reporting on specific substances by persons in the extractive industry under authority of TSCA section 8(a).

Finally, even though firms in the extractive industry may be exempt from this rule, they are still subject to the substantial risk notification requirements of TSCA section 8(e). This provision requires reporting of information that reasonably supports the conclusion of substantial risk of injury to health or the environment. The Agency has received submissions from mining concerns under section 8(e) and we expect this type of reporting activity to continue.

C. Processors Subject to the Rule

There are two types of processors subject to this rule.

If a company is processing a chemical it manufactures, that company must collect allegations on any of its processing or distribution in commerce activities involving that chemical. See A of this unit.

If a company is processing a chemical it does not manufacture, that company must collect allegations involving that chemical only for those activities described in Standard Industrial Classification (SIC) Major Group 28—Chemicals and Allied Products, or SIC code 2911—Petroleum Refining. It also must collect allegations relating to any further processing or distribution in commerce of any products resulting from such processing activities.

Thus, a firm that processes chemical substances but that is not a manufacturer can be subject to this rule. However, the Agency has decided to limit the applicability of the rule where this type of processor is concerned. The Agency has concluded that the best approach is to concentrate the recordkeeping responsibility with those firms that have at least one plant site engaged in activities within the mainstream of the chemical industry. The Agency believes that such processors are likely to be among the firms that have the greatest stake in recording and if appropriate, taking positive or corrective action with respect to allegations received. The Agency feels that by focusing the recordkeeping responsibility with these processors the rule enhances the concept of product stewardship, a growing practice within the chemical industry that continually assesses the potential health and safety risks of substances at each stage from development through disposal.

Again, the Agency considers it necessary to outline for processors subject to this rule their specific responsibility regarding collection of allegations. Such processors must collect:

1. Any allegation identifying any chemical substance, mixture, or article resulting only from processing activities as described in SIC 28 or SIC 2911, or identifying the operations involved in making such products (see unit III. B. of this preamble and § 717.10 of the rule).

2. Any allegation identifying any of its own further processing or distribution in commerce activities of the products described in 1. above.

3. Any allegation identifying emissions, effluents, or other discharges from activities described above.

Note that if a company is not a manufacturer of a chemical substance, but is only a processor, it is only required to collect allegations relating to products resulting from activities described in SIC codes 28 and 2911. A processor subject to this rule is not required to collect allegations involving substances it does not produce. For example, an allegation specifically involving a mixture component bought from some other company does not have to be collected (although allegations involving the processing of the component or the new product created would be collected by the processor). As with manufacturers, the Agency believes that processors have a strong incentive to forward allegations on a mixture component to the supplier of that component. The Agency strongly encourages this passback activity.

At this juncture, the Agency wishes to make clear two very important points relating to processing operations and the use of SIC codes in this preamble and rule. First, when a company is deciding whether it is "engaged in activities described" in SIC codes, it must refer to the descriptions that appear after each four digit code. The company should not rely solely on the listing of substances that appears after the descriptions. These descriptions are generic in nature and refer to the production of categories of chemicals, mixtures, or other chemical products. It is quite possible that a company may be processing chemicals to produce a substance or product that does not specifically appear in the list of substances that follows the generic description. However, the company's activities would be subject to categories contained in the generic description.

The second point is that terms used in the SIC codes are not necessarily the same as those used in this rule. For the purpose of this rule, the TSCA definitions of "manufacture" and "process" apply. Activities described in SIC codes 28 and 2911 are categorized by the SIC system as "manufacturing." This term is broader than the TSCA definition of manufacture and encompasses activities referred to as "processing" under this rule. For example, a company referred to under SIC code 2851 as engaged in the activity of manufacturing paints is, for the purposes of this rule, a processor of the chemicals used to make the paints. Thus, it is subject to this rule as a chemical "processor" engaged in an activity described in SIC code 28. (The company is also a mixture manufacturer under TSCA definitions.) Accordingly, section 717.5(c) of the rule provides that where there is a conflict between the SIC code use of a term and the definition of that term in this rule, the rule definition applies.

D. Processors Not Subject to the Rule

A processor, who is not also a manufacturer, is not subject to this rule if none of the sites it owns or controls is engaged in activities described in SIC 28 or SIC 2911. The TSCA definition of processor is such that tens of thousands of firms could be made subject to recordkeeping responsibilities of section 8(c). For example, a shoemaker that applies a dye to shoes is, technically, a processor because of the incorporation of that chemical dye into an article for distribution in commerce. Likewise, a

hardware store that adds a pigment to premixed paint is a processor.

Such "processing" permeates the economy. To include firms engaged in activities of this nature under the rule would create a vast recordkeeping requirement. The economic analysis for the proposed rule estimated that some 543,000 establishments outside of SIC 28 or 2911 could be made subject to this rule as processors. Requiring these establishments to collect allegations would be an administrative nightmare. Further, the public health concerns of section 8(c) would not be harmed by excluding these establishments because they would have a strong incentive to refer complaints about chemicals they "process" to the suppliers of those chemicals—firms that are likely to be subject to this rule.

In this final rulemaking the Agency did consider making such "other" processors subject but with an alternative compliance method. The purpose would be to promote the passback of allegations to those required to maintain records. In brief, such firms could be required to record allegations or they could discharge this responsibility by forwarding such allegations to their supplier. This would be similar to the alternative compliance mechanism for distributors as outlined in the proposed rule.

After evaluating this alternative compliance method the Agency has determined that such a requirement could actually inhibit allegation passback as much as it could enhance it. If this regulatory requirement were imposed, such firms may take the path of least resistance to satisfy the requirement. Basically, it would be less of an administrative burden to file automatically any complaint or allegation received than it would be to evaluate the allegation, determine to whom such allegation should be sent and do the paperwork, including keeping a copy of all this correspondence. Added to these considerations is the fact that subjecting these numerous processors to an alternative compliance method is still adding substantially to the overall burden of the rule.

As a result, the Agency is not implementing an alternative compliance method for processors solely engaged in processing activities outside of SIC 28 and 2911. The Agency is not ruling out the future implementation of such a provision. However, EPA prefers at this time to support the concept of product stewardship as previously discussed. We strongly encourage those manufacturers and processors that are subject to the rule to educate their customers regarding TSCA section 8(c), and to stress the importance of passing back any potentially recordable allegations.

E. Retailer and Sole Distributor Exemptions

As defined by the rule, a retailer is a person who distributes in commerce a chemical substance, mixture, or article to ultimate purchasers who are not commercial entities. The proposed rule exempted retailers, unless such firms were already subject to the rule as a manufacturer or a processor. This exemption of retailers is retained in the final rule and is expanded to exempt other companies whose sole function is to distribute chemical substances. By sole function the Agency means that such company is not also a manufacturer or processor subject to this rule. For example, a "distributor" who repackages chemical substances is actually "processing for commercial purposes" and, therefore, is a processor. Sole distributors may include wholesale distributors of chemicals as classified in SIC 5161—Chemicals and Allied Products, SIC 5171—Petroleum Bulk Stations and Terminals, and SIC 5172—Petroleum and Petroleum Products Wholesalers.

As stated in the proposed rule, retailers are exampt because the potential for retail employees being exposed is limited, since they generally handle packaged products. Also, highly developed communications exist between retailers and their suppliers regarding consumer complaints. Another factor is that the large number of such retail firms would create a highly dispersed records situation that would not serve one of the purposes of this rule, i.e., the ability to detect pattens of adverse affects. EPA requested comment on whether retailers should be made subject to the rule but no comments convinced the Agency that such inclusion would make the rule substantially more effective.

There are a number of reasons why the exemption should be expanded to include all sole distributors.

First, the incidence of recordable allegations made to such firms is likely to be very low. As commenters have pointed out, the same rationale for exempting retailers could be applied to wholesale distributors. That is, the potential for worker exposure is minimized because the workers normally handle packaged or containerized substances.

Second, wholesale distributors receive few customer or consumer-type allegations, and any that are received are forwarded to the manufacturer or other supplier. This point was made clear by the economic analysis for the proposed rule to implement section 16(b) of the Consumer Product Safety Act (see item 21 of the public record).

Third, exempting these sole distributors from the rule does not necessarily create a gap in Federal government information gathering regarding adverse reactions to human health or the environment. The Agency believes that warehousing accidents and accidental spills related to transporting chemicals are likely to be the major causes of adverse reactions to distributor employees, or the environment. Thus, these incidents would be verified events and are not likely to be the subject of allegation. They would be recordable in many cases under the Occupational Safety and Health Act, or reportable to EPA or to the Department of Transportation/U.S. Coast Guard under one of several authorities. However, if an employee of a distributor alleges that normal handling of a certain substance caused a repeated adverse reaction, then the affected person can submit an allegation to the substance's manufacturer. The distributor can also make such an allegation on behalf of its employees.

The Agency proposed an alternative compliance method for distributors similar to the alternative compliance method considered for "other" processors (see D. above). Under this proposal, distributors would be required to keep allegations or they could discharge that responsibility by forwarding such allegations to the appropriate manufacturer or processor. It appears, as explained earlier, that such an alternative compliance method could actually be counterproductive. Also, it is the standard business practice of such distributors to forward complaints to their suppliers. Therefore, the Agency has concluded that imposition of an alternative compliance method is unnecessary.

F. Standard Industrial Classification (SIC) System

The Agency is using the Standard Industrial Classification (SIC) system to help firms determine whether or not they may be subject to this rule. The Bureau of the Census within the U.S. Department of Commerce currently has responsibility for the SIC system. Among other important functions, these SIC codes are a standard reference for categorizing basic business activities throughout the U.S. economy.

Detailed descriptions of substances or business activities as they relate to certain SIC codes are given in the Standard Industrial Classification

Manual, 1972 available from the U.S. Government Printing Office, Washington, D.C., 20402—stock number 4101–0066, and the 1977 Supplement—stock number 003–005–0176–0. Information regarding the SIC system may also be obtained through the regional offices of the Bureau of the Census, U.S. Department of Commerce.

V. Recordkeeping Requirements

There are two basic differences between the proposed and final rule regarding recordkeeping requirements. First, records are to be located at the company's headquarters or at any other appropriate location central to their chemical operations rather than being kept at each plant site. The Agency agreed with comments stating that centralized recordkeeping would be more efficient for a company and would have a greater potential to exhibit patterns of adverse reactions. In addition, such centralized recordkeeping will allow more efficient inspections of records by the Agency.

Second, the Agency is not including a specific form to be used for either recordkeeping or reporting. The Agency agreed with comments that the firms subject to the rule should be allowed to keep information in a format of their own choosing so long as the required information is present.

The following required information must be readily accessible under this rule as the allegation record:

1. The orginal allegation as received.

2. An abstract of the allegation and other pertinent information as follows:

a. The name and address of the plant site that received the allegation.

b. The date the allegation was received.

c. The implicated substance, mixture, article, company process or operation, or site effluent, emission or other discharge.

d. A description of the alleger (e.g., company employee, individual consumer, plant neighbors, etc.). If the allegation involves a health effect, the sex and year of birth of the affected individual should be recorded, if ascertainable.

e. A description of the health effect(s). The description must relate how the health effects became known and the route of exposure, if explained in the allegation.

f. A description of the environmental effect(s), identifying the affected plant and/or animal species, or contaminated portion of the environment.

3. The results of any self-initiated investigation of the allegation. The regulation does not require a company to perform any investigation in connection with allegations received. However, if a company chooses to investigate the curcumstances of an allegation, then the results of that investigation must be included in the record.

4. Copies of any further required reports or records relating to the allegation. If a company is required to keep any other record or make any other report relating to the allegation (e.g., Occupational Safety and Health Administration Form 101), then a copy of that record or report must also be placed in the file. This does not include internal records or reports developed or maintained by a company except as provided above.

Allegation records are to be readily accessible according to the alleged cause of the significant adverse reaction. Therefore allegations must be filed according to chemical identity, or one of the following if the chemical is not named: mixture identity, article identity, company process or operation, or site effluent, emission or other discharge.

The statute requires that records of adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. The Agency interprets this provision to require firms subject to the rule to retain all such employee health-related allegations, whether or not the allegation was submitted by that firm's own employee.

For example, an employee of firm A can submit an allegation to firm B regarding B's chemical that he handles in his own workplace. This is an allegation relating to the health of an employee and, in the Agency's view, such allegation must be retained for 30 years by the producer of the substance in question. Other allegations such as from consumers or those relating to environmental reactions must be retained for a period of five years.

Firms are not required to incorporate existing records (i.e. allegations or similar complaints on file before the effective date of this rule) into their section 8(c) records. Allegations subject to this rule are those received on or after the effective date of this rule. However, the Agency encourages firms to correlate any allegations subject to this rule with their existing records so that any patterns of adverse reactions can be identified at the earliest possible stage.

VI. Inspection and Reporting Requirements

Section 8(c) of TSCA states that upon request of any duly designated representative of the Administrator, each person who is required to keep records shall permit the inspection of such records and shall submit copies of such records.

A. Inspections

The inspection of section 8(c) records will serve three purposes. First, this records inspection will be a means of monitoring basic compliance with the rule. Agency compliance monitoring staff will conduct inspections of TSCA section 8(c) records on a routine basis. Records for selected chemicals or industry segments also will be inspected on a case-by-case basis. Along with required reporting discussed below, inspections of section 8(c) records will be used to carry out one of the basic purposes of the rule, the identification of patterns of adverse effects. Information obtained during inspections will be correlated with information the Agency obtains through other inspections, reports required under sections 8(d) and 8(e) of TSCA, and other information in the Agency's possession.

The third purpose of inspections is to aid in the evaluation of the rule itself. The Agency intends to do an ongoing evaluation of the rule (see Unit IX) since section 8(c) requires long-term maintenance of unique information.

Comments on the proposed rule expressed concern that the rule did not provide adequate procedural safeguards. Inspections under this rule will be done in full compliance with the requirements of section 11 of TSCA.

B. Reporting

The preamble of the proposed rule discussed the inclusion of an automatic reporting system. Under this proposal, a company would be required to forward records to the Agency if it recorded three or more allegations in one year regarding the same substance.

The Agency received a considerable amount of comment on the issue of automatic reporting. Environmental and labor groups generally supported the concept of automatic reporting as a means to detect patterns of adverse effects. Some wanted the reporting trigger made more stringent, e.g., if three similar allegations were accumulated over a period of three to five years, rather than one year.

Comments received from chemical companies and industry groups opposed automatic reporting. They pointed toward the increased burden such a requirement would place upon recordkeepers. Commenters claimed that, due to the unsubstantiated nature of allegations, such a system would

flood the Agency with information of questionable quality and usefulness. If any type of automatic reporting system were to be promulgated, companies much preferred submission of an annual statistical summary of allegations—an alternative discussed in the preamble of the proposal.

After having considered the many comments received, the Agency has decided not to institute an automatic reporting provision at this time. The Agency has concluded that it is not feasible to design an appropriate automatic reporting system until we can determine what kinds of receord are being kept under the rule and in what volume.

This does not mean, however, that information placed in a section 8(c) file will languish until such file may be inspected. First, the Agency expects that the accumulation of several similar allegations may contribute to the development of a notification of substantial risk as required by TSCA section 8(e). The Agency has received section 8(e) notices where allegations from workers or customers served as the first indication of a possible problem. Along with subsequently developed test data, these allegations formed part of the information that gave the company a reasonable basis to conclude that their product could pose a substantial risk of injury to health or the environment. The agency believes that the formalization of allegation recordkeeping by this rule will heighten a company's awareness of potential problems with their products and that these allegation records will not exist in a vacuum.

Second, the Agency will use reporting authority under section 8(c) to call in records that may relate to substances or classes of substances already under review. Such substances may be the specific recommendations of the Interagency Testing Committee or those that enter the Agency's evaluation process via other avenues such as section 8(e) submissions. For example, if a company submits a section 8(e) notice on a substance that is also produced by several other firms, it would be valuable to know if those other firms have allegations on file regarding that same substance.

The rule provides that when reporting of records is required, firms will be notified by letter or by a notice in the **Federal Register**.

VII. Confidentiality

When firms are required to submit records of allegations, they may assert a claim of business confidentiality for all or part of the information in those records. Any information covered by a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2.

Any claims of confidentiality must be made at the time of submission, as provided in 40 CFR 2.203(a)(2) and in the manner specified in § 717.17 of this regulation. This rule requires submission of two copies of allegation records—one copy indicating what information is claimed as confidential and a second copy in which this confidential information has been deleted. EPA will presumptively consider failure to submit the second copy as a waiver of the confidentiality claim. However, EPA will notify respondents who claim parts of records confidential that they did not submit the required second copy. This provision affords such persons the opportunity to correct errors within 30 days.

Many commenters objected to providing substantiation of confidentiality claims at the time that records of allegations are submitted to the Agency. They asserted that such substantiation is burdensome and only necessary if the allegation becomes subject to a Freedom of Information Act (FOIA) request. After considering these comments the Agency has concluded that a requirement for "up-front" substantiation is not necessary.

However, the claim must still be explained briefly at the time of submission indicating the reason for omitting certain facts in the allegation, e.g., that a worker's exposure to the substance in question during a certain processing step "reveals confidential process information." The Agency believes that this brief statement is necessary because EPA needs some understanding of the claims to have a basis for initial denial or granting of FOIA requests and to protect the information. This decision is consistent with confidentiality requirements of the TSCA section 8(d) rule (47 FR 38780, 40 CFR Part 716—Subpart A) for reporting unpublished health and safety studies and the TSCA section 8(e) policy statement (43 FR 11110) regarding notices of substantial risk.

VIII. Economic Impact

Commenters were critical of the estimates and methodology of the economic analysis published in conjunction with the proposed rule. Many said that the analysis grossly underestimated the cost of review, handle, and report allegations given the breadth of the proposed rule. Also, no estimate made of "start-up" costs, i.e., cost to set up a file system and train responsible personnel in the disposition of section 8(c) notices.

The economic analysis for the final rule takes into consideration several basic changes from the proposed rule, e.g., the reduced number of firms subject to the rule and no automatic reporting provision. It includes a first year industry-wide administrative (start-up) cost estimate of approximately $15 million. This cost includes establishment of a file system, training appropriate company officials, and educating workers regarding the rule's provisions. The estimates for the amount of time and cost for reviewing and processing individual allegations have also been reevaluated. The ongoing annual cost to industry for processing and filing allegations under the rule is estimated to be between $1.4 million and $2.1 million.

A separate document titled "Economic Impact Analysis of the TSCA Section 8(c) Significant Adverse Reaction Recordkeeping Rule" explains in more detail the estimated costs and administrative burdens of this rule. This document is available to the public in the public record of this rulemaking.

IX. Records Evaluation

After enough time has elapsed for the accumulation of some records (approximately 12–18 months from the rule's effective date) the Agency plans to inspect a representative sample of records maintained by both manufacturers and processors in different size categories. A survey of companies' experiences with the rule may also be part of this evaluation. The objective of this evaluation will be to determine the quality and quantity of records being maintained and whether the rule as currently written meets its stated objectives.

For example, one area of concern will be whether or not to retain the "known effects" exemption. The Agency will be interested in how often and in what kinds of cases the known effects exemption was applied. The Agency will look to see whether this exemption will have the effect commenters project that it will have, i.e., preventing the company's section 8(c) file from being filled with commonly occurring or well known adverse effects of substances. However, an adverse reaction must first pass the test of being "significant" before it is filed. Therefore, the Agency may wish to revisit the question of whether it would, in the long run, also be valuable to have a record of such significant adverse reaction allegations even if they are "known effects".

Also, the Agency may reconsider the need for such an exemption if, in the companies' experience, the exemption was seldom applicable or proved to be

more resource intensive to apply than simply filing any significant adverse reaction allegation received.

If this evaluation indicates a need to expand or reduce the requirements of this rule EPA will initiate appropriate procedures to modify the rule.

X. Public Record

EPA has established a public record for this rulemaking (docket number OPTS 83001). The record, along with a complete index, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C. 20460. This record includes basic information that the Agency considered in developing this rule. The record includes the following documents:

1. This final rule.
2. The document "Economic Impact Analysis of TSCA Section 8(c) Significant Adverse Reactions Recordkeeping Rule."
3. Final rule concept paper.
4. Minutes of the Administrator's Toxic Substances Advisory Committee (ATSAC) meetings of July 8, 1982, and September 9, 1982, at which issues related to the above concept paper were discussed.
5. ATSAC comments and recommendation on the approach to the final TSCA 8(c) rule.
6. Letters to ATSAC from the Chemical Manufacturers Association (September 8, 1982) and the National Paints and Coatings Association (September 9, 1982).
7. The proposed rule.
8. All comments on the proposed rule.
9. Written summaries of telephone comments on the proposed rule.
10. Transcripts of public meetings on the proposed rule held in Washington, D.C., Newark, N.J., and Houston, Texas.
11. The document titled "Responses to Individual Comments on the TSCA Section 8(c) Rule" which supplements this preamble and provides responses to substantive individual comments on the proposed rule.
12. The Advance Notice of Proposed Rulemaking publish in the Federal Register on March 11, 1977 (42 FR 13579).
13. All comments on that Advance Notice.
14. A draft of the proposed rule, dated October 12, 1978, sent to selected industry, labor, and public interest groups.
15. All letters of transmittal sent with that draft, and comments received on it.
16. Minutes of a November 13, 1978, meeting with industry and special interest groups to discuss the TSCA section 8(c) draft rule.
17. "Notification of Substantial Risk Under Section 8(e)," March 16, 1978 (43 FR 11110).
18. Occupational Safety and Health Administration regulations on "Recording and Reporting Occupational Injuries and Illnesses" (29 CFR Part 1904), and forms revised in 1978.
19. Consumer Product Safety Commission proposed reporting requirements regarding recordkeeping of consumer product safety complaints, November 3, 1977 (42 FR 57642).
20. Consumer Product Safety Commission interpretation of policy for "Reports of Substantial Product Hazards," August 7, 1978 (43 FR 34988).
21. "Final Report on the Economic Impact of Proposed Recordkeeping Rules to Deputy Associate Executive Directorate for Economic Analysis, U.S. Consumer Product Safety Commission," Battelle, Columbus, Ohio, March 19, 1979.
22. Minutes of an August 15, 1979, meeting with industry and special interest groups to discuss the TSCA section 8(c) draft rule.
23. Any comments received from the Office of Management and Budget during its review of this rule regarding compliance with the Paperwork Reduction Act or Executive Order 12291 and any EPA response to those comments.
24. Miscellaneous Agency comments, corrections, and correspondence relating to the rule.

EPA requests that persons who believe there are any errors or omissions in the Public Record notify the Agency within 30 days of the date of publication. Address all correspondence 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.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy. It is expected to have a first year maximum cost of $17.3 million and maximum yearly cost thereafter of $2.01 million. It does not have a significant effect on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based interprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments will be available for public inspection in the record for this rulemaking.

B. Regulatory Flexibility Act

Since this rule was proposed before the effective date of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Act's requirements do not apply. Even so, the economic analysis for the rule indicates that, under Agency criteria, the rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 USC 3501 *et. seq.*, the information provisions of this rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approves them. A notice of that approval will be published in the Federal Register.

List of Subjects in 40 CFR Part 717

Environmental protection, Hazardous materials, Chemicals Recordkeeping and reporting requirements, Significant adverse reactions.

Dated: August 11, 1983.

William D. Ruckelshaus,

Administrator.

Therefore, 40 CFR Chapter I is amended by adding a new Part 717 to read as follows:

PART 717—RECORDS AND REPORTS OF ALLEGATIONS THAT CHEMICAL SUBSTANCES CAUSE SIGNIFICANT ADVERSE REACTIONS TO HEALTH OR THE ENVIRONMENT

SUBPART A—GENERAL PROVISIONS

Sec.

717.1 Scope and compliance.
717.3 Definitions.
717.5 Persons subject to this Part.
717.7 Persons not subject to this Part.
717.10 Allegations subject to this Part.
717.12 Significant adverse reactions that must be recorded.
717.15 Recordkeeping requirements.
717.17 Inspection and reporting requirements.
717.19 Confidentiality.

Authority: Sec. 8(c), Pub. L. 94-469, 90 Stat. 2029 (15 U.S.C. 2607(c)).

Subpart A—General Provisions

§ 717.1 Scope and compliance.

Section 8 (c) of the Toxic Substances Control Act (TSCA) requires manufacturers, processors, and distributors of chemical substances and mixtures:

(a) To keep "records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture."

(b) To "permit inspection and submit copies of such records", upon request of any designated representative of the Administrator. This rule implements section 8(c) of TSCA. It describes the records to be kept and prescribes the conditions under which certain firms must submit or make the records available to a duly designated representative of the Administrator.

§ 717.3 Definitions.

The definitions set forth in section 3 of TSCA and the following definitions apply to this Part:

(a) "Allegation" means a statement, made without formal proof or regard for evidence, that a chemical substance or mixture has caused a significant adverse reaction to health or the environment.

(b) "Firm" or "company" means any person, that is subject to this Part, as defined in § 717.5.

(c)(1) "Known human effects" means a commonly recognized human health effect of a particular substance or mixture as described either in:

(i) Scientific articles or publications abstracted in standard reference sources.

(ii) The firm's product labeling or material safety data sheets (MSDS).

(2) However, an effect is not a "known human effect" if it:

(i) Was a significantly more servere toxic effect than previously described.

(ii) Was a manifestation of a toxic effect after a significantly shorter exposure period or lower exposure level than described.

(iii) Was a manifestation of a toxic effect by an exposure route different from that described.

(d) "Manufacture" or "process" means to manufacture or process for commercial purposes.

(e)(1) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture:

(i) For distribution in commerce, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) "Manufacture for commercial purposes" also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substances or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(f) "Person" includes any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, and any department, agency, or instrumentally of the Federal Government.

(g) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(h) "Retailer" means a person who distributes in commerce a chemical substance, mixture, or article to ultimate purchasers who are not commercial entities.

(i) "Significant adverse reactions" are reactions that may indicate a substantial impairment of normal activities, or long-lasting or irreversible damage to health or the environment.

(j) "Site" means a contiguous property unit. Property divided only by a public right-of-way is considered one site. There may be multiple manufacturing, processing, or distribution activities occurring within a single site.

(k) "Substance" means a chemical substance or mixture unless otherwise indicated.

§ 717.5 Persons subject to this Part.

(a) *Manufacturers.* (1) All manufacturers of chemical substances are subject to this Part except as provided in § 717.7(a). If manufacture of a chemcial substance occurs at any site owned or controlled by a firm then that firm is subject to this Part.

(2) A manufacturer must collect:

(i) Any allegation identifying a chemical substance it manufactures and any allegation identifying the operations in the manufacture of any chemical substance it manufactures.

(ii) Any allegation identifying any of its own processing or distribution in commerce activities with respect to any chemical substance it manufactures.

(iii) Any allegation identifying emissions, effluents, or other discharges from activities described in this paragraph.

(3) For the purpose of this Part, owned or controlled means ownership of 50 percent or more of a firm's voting stock or other equity rights, or the power to control the management and policies of that firm.

(b) *Processors.* (1) A person who processes chemical substances, who is not also a manufacturer of those substances, is subject to this Part if such person is engaged in activities described in Standard Industrial Classification (SIC) Major Group 28—Chemicals and Allied Products, and SIC code 2911—Petroleum Refining.

(2) As a processor subject to this Part such person must collect:

(i) Any allegation identifying any chemical substance, mixture, or article resulting only from processing activities as described in SIC 28 or SIC 2911, and any allegation identifying the operational steps involved in producing such products.

(ii) Any allegation identifying any of its own further processing or distribution in commerce activities of the products described in paragraph (b)(2)(i) of this section.

(iii) Any allegation identifying emissions, effluents, or other discharges from activities described in this paragraph.

(c) *SIC code.* SIC codes applicable to this Part are published in Standard Industrial Classification Manual—1972 and the 1977 Supplement. This manual and supplement may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402—stock number 4101–0006 and stock number 003–005–0170–0 respectively. Where there is a conflict between the SIC code use of a term and the definition of that term in this Part, the definition in this Part applies.

§ 717.7 Persons not subject to this Part.

(a) *Manufacturers.* Persons or site activities are exempt from this Part if the means by which they manufacture a chemical substance solely involves

mining or other solely extractive functions, e.g., those companies or sites within a company whose sole function is to mine mineral ores, extract petroleum or natural gas, quarry non-metallic minerals (including extraction of salts from seawater or brines), mine or otherwise extract coal, or separate gases from the atmosphere. This exemption may include, but is not necessarily limited to, firms engaged in activities as described in SIC Division B—Mining and SIC Code 2813—Industrial Gases.

(b) *Processors.* A processor, who is not also a manufacturer, is not subject to this Part if none of the sites that processor owns or controls is engaged in activities as described in SIC 28 or SIC 2911.

(c) *Sole distributors.* A person solely engaged in the distribution of chemical substances is exempt from this Part, unless such person is also a manufacturer or processor subject to this Part. For example, a "distributor" who repackages chemical substances or mixtures is considered to be a processor and, thus, is not a sole distributor. Sole distributors may include, but are not limited to, those firms that distribute chemical substances as described in the wholesale trade SIC codes 5161—Chemicals and Allied Products, 5171—Petroleum Bulk Stations and Terminals, and 5172—Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.

(d) *Retailers.* A person who is a retailer is exempt from this Part unless such person is also a manufacturer or a processor subject to this Part.

§ 717.10 Allegations subject to this Part.

(a) Allegations subject to this part are those allegations received on or after November 21, 1983 by persons subject to this Part.

(b) Allegations subject to this Part are those that:

(1) Are submitted either in writing and are signed by the alleger, or are submitted orally. In the case of an oral allegation, the firm must transcribe the allegation into written form, or it must inform the alleger that such allegation may be subject to this Part and request that the alleger submit such allegation to the firm in writing and signed.

(2) Implicate a substance that caused the stated significant adverse reaction by one of the following:

(i) Naming the specific substance.

(ii) Naming a mixture that contains a specific substance.

(iii) Naming an article that contains a specific substance.

(iv) Naming a company process or operation in which substances are involved.

(v) Identifying an effluent, emission, or other discharge from a site of manufacturing, processing or distribution of a substance.

(c) Allegations subject to this Part may be made to a firm by any person, such as an employee of the firm, individual consumer, a neighbor of the firm's plant, another firm on behalf of its employees or an organization on behalf of its members.

(d) EPA intends that firms should, to the maximum practical extent, provide allegers with information regarding the ultimate disposition of their allegations. For example, firms could provide a brief notice to the alleger stating that a record was created under this Part based upon their allegation, or that a record was not created and briefly explain the reasons why not.

§ 717.12 Significant adverse reactions that must be recorded.

(a) Except as provided in paragraph (b) of this section, significant adverse reactions to human health that must be recorded include but are not limited to:

(1) Long-lasting or irreversible damage, such as cancer or birth defects.

(2) Partial or complete impairment of bodily functions, such as reproductive disorders, neurological disorders or blood disorders.

(3) An impairment of normal activities experienced by all or most of the persons exposed at one time.

(4) An impairment of normal activities which is experienced each time an individual is exposed.

(b) Firms are not required to record significant adverse reactions that are known human effects as defined in § 717.3(c).

(c) Except as provided in paragraph (d) of this section, significant adverse reactions to the environment that must be recorded, even if restricted to the environs of a plant or disposal site, include but are not limited to:

(1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms, in an area.

(2) Abnormal number of deaths of organisms (e.g., fish kills).

(3) Reduction of the reproductive success or the vigor of a species.

(4) Reduction in agricultural productivity, whether crops or livestock.

(5) Alterations in the behavior or distribution of a species.

(6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of ground water, and surface water and soil resources that have limited self-cleansing capability.

(d) Firms are not required to record a significant adverse reaction to the environment if the alleged cause of that significant adverse reaction can be directly attributable to an accidental spill or other accidental discharge, emission exceeding permitted limits, or other incident of environmental contamination that has been reported to the Federal Government under any applicable authority.

§ 717.15 Recordkeeping requirements.

(a) *Establishment and location of records.* A firm subject to this Part shall establish and maintain records of significant adverse reactions alleged to have been caused by chemical substances or mixtures manufactured or processed by the firm. Such records shall be kept at the firm's headquarters or at any other appropriate location central to the firm's chemical operations.

(b) *Content of records.* The record shall consist of the following:

(1) The original allegation as received.

(2) An abstract of the allegation and other pertinent information as follows:

(i) The name and address of the plant site which received the allegation.

(ii) The date the allegation was received at that site.

(iii) The implicated substance, mixture, article, company process or operation, or site discharge.

(iv) A description of the alleger (e.g., "company employee," "individual consumer," "plant neighbor"). If the allegation involves a health effect, the sex and year of birth of the individual should be recorded, if ascertainable.

(v) A description of the alleged health effect(s). The description must relate how the effect(s) became known and the route of exposure, if explained in the allegation.

(vi) A description of the nature of the alleged environmental effect(s), identifying the affected plant and/or animal species, or contaminated portion of the physical environment.

(3) The results of any self-initiated investigation with respect to an allegation. (EPA does not require persons subject to this Part to investigate allegations received, and no provision of this Part shall be construed to imply that EPA recommends, encourages or requires such investigation.)

(4) Copies of any further required records or reports relating to the allegation. For example, if an employee allegation results in a requirement for the firm to record the case on Occupational Safety and Health Form

101 or appropriate substitute (see 29 CFR Part 1904 for requirements under the Occupational Safety and Health Act of 1970), a copy of that OSHA record must be included in the allegation record.

(c) *File structure.* Records must be retrievable by the alleged cause of the significant adverse reaction, which cause may be one of the following:

(1) A specific chemical identity.

(2) A mixture.

(3) An article.

(4) A company process or operation.

(5) A site emission, effluent or other discharge.

(d) *Retention period.* Records of significant adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. This provision requires persons subject to this Part to retain for 30 years an employee health related allegation, arising from any employment related exposure, whether or not such allegation was submitted by or on the behalf of that recordkeeper's own employee. Any other record of significant adverse reactions shall be maintained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record.

(e) *Transfer of records.* (1) If a firm ceases to do business, the successor must receive and keep all the records that must be kept under this Part.

(2) If a firm ceases to do business and there is no successor to receive and keep the records for the prescribed period, these records must be transmitted to EPA. See § 717.17(c) for the address to which such records must be sent.

§ 717.17 Inspection and reporting requirements.

(a) *Inspection.* Firms must make records of allegations available for inspection by any duly designated representative of the Administrator.

(b) *Reporting.* Each person who is required to keep records under this Part must submit copies of those records to the Agency as required by the EPA Administrator or appropriate designee. EPA will notify those responsible for reporting by letter or will announce any such requirements for submitting copies of records by a notice in the **Federal Register.** Such letter or notice will be signed by the Administrator or appropriate designee, and will specify which records or portion of records must be submitted. The reporting period will be specified by the letter or notice but in no case will such reporting period be less than 45 days from the date of the letter or the effective date of the notice.

(c) *How to report.* When required to report, firms must submit copies of records (preferably by certified mail) to the Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, Washington, DC 20460.

§ 717.19 Confidentiality.

(a) Any person submitting copies of records may assert a business confidentiality claim covering all or part of the submitted information. Any information covered by a claim will be disclosed by EPA only as provided in procedures set forth at Part 2 of this title.

(b) If no claim accompanies a document at the time it is submitted to EPA, the document will be placed in an open file available to the public without further notice to the respondent.

(c) To asset a claim of confidentiality for information contained in a submitted record, the respondent must submit two copies of the document.

(1) One copy must be complete. In that copy, the respondent must indicate what information, if any, is claimed as confidential by marking the specific information on each page with a label such as "confidential", "proprietary", or "trade secret" and briefly state the basis of the claim.

(2) If some information is claimed as confidential, the respondent must submit a second copy of the record. The second copy must be complete, except that all information claimed as confidential in the first copy must be deleted.

(3) The first copy will be for internal use by EPA. The second copy will be placed in an open file to be available to the public.

(4) Failure to furnish a second copy when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of receipt of notification to submit the required second copy. If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the public file.

[FR Doc. 83–22942 Filed 8–19–83; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
August 22, 1983

Part IV

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 950]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued Aguust 17, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–2: New OCS lease
- 102–1: New well (2.5 Mile rule)
- 102–3: New well (1000 Ft rule)
- 102–4: New onshore reservoir
- 102–5: New reservoir on old LCS lease

Section 107–DP: 15,000 feet or deeper
- 107–GB: Geopressured brine
- 107–CS: Coal Seams
- 107–DV: Devonian Shale
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 950

ISSUED AUGUST 17, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ABRAXAS PETROLEUM CORP				RECEIVED:	07/29/83	JA: TX			
8347085	F-8A-069637	4211531436		102-2		VANDIVERE #1	ADCOCK (SPRABERRY)	33.0	WESTAR TRANSMISSI
-AMOCO PRODUCTION CO				RECEIVED:	07/29/83	JA: TX			
8347221	F-7C-070439	4213730838		107-TF		C O WHITWORTH #10	SAWYER CANYON	164.0	LONE STAR GAS CO
8347219	F-8B-070435	4249531560		103		IDA HENDRICK T-88-N #10	HENDRICK	0.0	CABOT PIPELINE CO
8347220	F-8B-070436	4200395013		103		MIDLAND FARMS AU #4	FASKEN (PENN)	160.0	AMOCO PRODUCTION
-ANDCO OIL				RECEIVED:	07/29/83	JA: TX			
8347269	F-10-070547	4217931328		103		GEORGIA "B" (05382) #1	PANHANDLE,GRAY COUNTY	86.0	GETTY OIL CO
-APEX PETROLEUM INC				RECEIVED:	07/29/83	JA: TX			
8347162	F-7B-70277	4208333432		102-4		JOHN E WOLF #16	WOLF (SERRATT LOWER)	30.0	EL PASO HYDROCARD
8347119	F-7B-69772	4208333439		102-4		JOHN E WOLF #24	WOLF (SERRATT LOWER)	0.0	EL PASO HYDROCRAB
-ARCO OIL AND GAS COMPANY				RECEIVED:	07/29/83	JA: TX			
8347264	F-7C-070529	4246131998		103		DEWAYNE LINDSEY #1	CORBETT (BEHD)	200.0	NEW ENERGY CO
8347217	F-8B-070422	4213534003		103		GOLDSMITH CUMMINS DEEP UNIT #176	GOLDSMITH (CLEARFORK)	33.0	PHILLIPS PETROLEU
8347235	F-8B-070456	4210303060		108		H C GARNETT "B" 1LT	DAWSON (DEVONIAN)	16.0	PHILLIPS PETROLEU
8347256	F-8B-070505	4200333397		103		H M FORD "A" #4	PARKER (PENNSYLVANIAN	45.0	
8347073	F-7C-069552	4241300598		108		HULLDALE (PENN REEF) UNIT #2086	HULLDALE (PENN REEF)	4.8	ARCO OIL & GAS CO
8347071	F-7C-069550	4241300723		108		HULLDALE (PENN REEF) UNIT #2201	HULLDALE (PENN REEF)	5.4	ARCO OIL & GAS CO
8347088	F-7C-069645	4241300171		108		HULLDALE (PENN REEF) UNIT #2503	HULLDALE (PENN REEF)	6.0	ARCO OIL & GAS CO
8347074	F-7C-069553	4241300290		108		HULLDALE (PENN REEF) UNIT #3402	HULLDALE (PENN REEF)	4.2	ARCO OIL & GAS CO
8347072	F-7C-069551	4241300604		108		HULLDALE (PENN REEF) UNIT #3503	HULLDALE (PENN REEF)	7.2	ARCO OIL & GAS CO
8347143	F-7C-70192	4241300621		108		VIRGIL J POWELL TR "B" #4	TILLERY	6.8	ARCO OIL & GAS CO
-ASHFORD OIL & GAS CO				RECEIVED:	07/29/83	JA: TX			
8347195	F-8Z-70361	4228531717		102-4		SAM CUTBIRTH #3	ASHFORD (YEGUA)	383.0	UNITED TEXAS TRAN
-AUSANKA OIL OPERATIONS				RECEIVED:	07/29/83	JA: TX			
8347144	F-7B-70194	4236731569		102-4		BOYD UNIT #1	WEATHERFORD (1400)	30.0	EMPIRE PIPELINE C
8347276	F-09-070569	4223732863		108		C H CONNER #1	DILLARD SE (ELLENBERG	9.8	TEXAS UTILITIES F
8347146	F-7B-70196	4236731408		108		C L RAPER GAS UNIT #1 C & T	WEATHERFORD SW (STRAW	14.0	EMPIRE PIPELINE C
8347277	F-09-070578	4207732075		102-4		I D SMITH "B" #1	SHANNON (CADDO)	28.0	TEXAS UTILITIES F
8347275	F-09-070568	4207731686		108		JOSEPHINE HOWARD OIL UNIT #1	SHANNON (CADDO)	1.9	TEXAS UTILITIES F
8347145	F-7B-70195	4236731570		108		PEDEN GAS UNIT #1	WEATHERFORD SW (STRAW	6.8	EMPIRE PIPELINE C
8347274	F-09-070567	4207731754		108		R H PETERSON "A" #2	SHANNON (CADDO)	10.5	TEXAS UTILITIES F
-BALLARD EXPLORATION CO INC				RECEIVED:	07/29/83	JA: TX			
8347151	F-8B-70234	4224130386		103		ARCO FEE #3	EAST CHAMPION	55.0	TENNECO POLYMERS
-BANDERA EXPLORATION CO				RECEIVED:	07/29/83	JA: TX			
8347077	F-09-069562	4233732023		102-4		B E C #1 (23128)	BANDERA (LYN 6230)	25.0	LONE STAR GAS CO
-BEN J TAYLOR				RECEIVED:	07/29/83	JA: TX			
8347237	F-7B-070461	4236732488		102-4		SAVAGE #2 105454	MOBY DICK (MARBLE FAL	36.0	EMPIRE PIPELINE C
-BRIDWELL OIL CO				RECEIVED:	07/29/83	JA: TX			
8347113	F-09-69759	4207732665		102-4		AYRES ESTATE #1	BELLEVUE WEST	10.0	FAGADAU ENERGY CO
8347112	F-09-69758	4207732909		102-4		AYRES ESTATE #2	BELLEVUE WEST	25.0	FAGADAU ENERGY CO
8347114	F-09-69760	4207732781		102-4		DAYCO UNIT #1	BELLEVUE WEST	30.0	FAGADAU ENERGY CO
8347117	F-09-69763	4207732779		102-4		H T AYRES #1	BELLEVUE WEST	12.0	FAGADAU ENERGY CO
8347115	F-09-69761	4207732679		102-4		PIERCE #1	BELLEVUE WEST	10.0	FAGADAU ENERGY CO
8347116	F-09-69762	4207732350		102-4		PIERCE "A" #1	BELLEVUE WEST	10.0	FAGADAU ENERGY CO
-BTA OIL PRODUCERS				RECEIVED:	07/29/83	JA: TX			

BILLING 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8347093	F-08-069659	4217331409		103		7613 JV-P COX -B- #10	BLALOCK LAKE S (WOLFC	26.0	PHILLIPS PETROLEU
-BURNETT OIL CO INC				RECEIVED:	07/29/83	JA: TX			
8347184	F-08-70338	4210332634		103		M B MCKNIGHT "C" #10	RUNNING W NORTH HOLT	102.0	WARREN PETROLEUM
8347185	F-08-70339	4210332633		103		M B MCKNIGHT "C" #9	RUNNING W NORTH HOLT	82.0	WARREN PETROLEUM
-BUTTERWORTH JAMES				RECEIVED:	07/29/83	JA: TX			
8347135	F-78-69871	4244733577		102-4		GEORGE HARVICK-STACY #1	STACY (SWASTIKA)	100.0	H S T GATHERING C
-C F LAWRENCE & ASSOC INC				RECEIVED:	07/29/83	JA: TX			
8347075	F-7C-069560	4210334162		103		SHANNON G-1	TODD (SAN ANDRES)	0.0	APACHE GAS CORP
-CARTER EXPLORATION CO				RECEIVED:	07/29/83	JA: TX			
8347043	F-02-069325	4223931644		102-4	103	C S VANCE #1 ID #NA	CARMICHAEL (2710)	42.0	DELHI GAS PIPELIN
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	07/29/83	JA: TX			
8347165	F-04-70282	4235500000		108		DRISCOLL-ELLIFF UNIT 1	AQUA DULCE (7150 SAND	0.0	TENNESSEE GAS PIP
8347155	F-03-70261	4205131558		102-2		PETER B COURT #1	GIDDINGS (AUSTIN CHAL	41.0	FERGUSON CROSSING
-CHARLES H BENTLEY				RECEIVED:	07/29/83	JA: TX			
8347081	F-7B-069614	4244733344		103		HARRINGTON #1	THROCKMORTON COUNTY R	18.0	THROCKMORTON GAS
-CHEVRON U S A INC				RECEIVED:	07/29/83	JA: TX			
8347190	F-8A-70345	4241532353		103		SACROC UNIT #117-5	KELLY - SNYDER	128.0	EL PASO NATURAL G
8347187	F-8A-70342	4241532394		103		SACROC UNIT #27-17	KELLY - SNYDER	86.0	EL PASO NATURAL G
8347189	F-8A-70344	4241532340		103		SACROC UNIT #53-4	KELLY - SNYDER	229.0	EL PASO NATURAL G
8347188	F-8A-70343	4241532371		103		SACROC UNIT #59-4	KELLY - SNYDER	59.0	EL PASO NATURAL G
-CHISHOLM OIL INVESTMENTS				RECEIVED:	07/29/83	JA: TX			
8347017	F-01-068923	4217731402		102-2		SCOTTY #2	PEACH CREEK (AUSTIN C	0.0	TIPPERARY CORP
-CIRCLE SEVEN PRODUCTION CO				RECEIVED:	07/29/83	JA: TX			
8347047	F-09-069345	4223734986		102-4		CECIL LOWE #1	TIPTON (ATOKA CONGL)	0.0	CITIES SERVICE CO
-CITIES SERVICE OIL & GAS CORP				RECEIVED:	07/29/83	JA: TX			
8347268	F-05-070543	4228930525		102-2	107-TF	JOHNSON AB #1	BRANTON (COTTON VALLE	1763.0	TEXAS UTILITIES F
8347080	F-08-069569	4213506975		108		THOMAS C #7	TXL (WOLFCAMP NORTH)	4.0	SHELL OIL CO
-CONOCO INC				RECEIVED:	07/29/83	JA: TX			
8347175	F-10-70321	4206500000		108		BURNETT 32A	WEST PANHANDLE	0.0	NORTHWEST CENTRAL
8347176	F-10-70322	4206500000		108		BURNETT 52A	WEST PANHANDLE	0.0	NORTHWEST CENTRAL
8347172	F-10-70314	4206500000		108		BURNETT 80A	WEST PANHANDLE	0.0	NORTHWEST CENTRAL
8347174	F-10-70319	4206500000		108		BURNETT 83A	WEST PANHANDLE	0.0	NORTHWEST CENTRAL
8347173	F-10-70318	4206500000		108		J J CRUTCHFIELD #1	WEST PANHANDLE	0.0	NORTHWEST CENTRAL
-COTTON PETROLEUM CORPORATION				RECEIVED:	07/29/83	JA: TX			
8347044	F-10-069335	4239330149		108		R D MILLS #1	R D MILLS (ATOKA)	0.0	MICHIGAN-WISCONSI
8347092	F-10-069658	4229530488		105		SEARCY #1	FOLLETT SOUTH	0.0	
-CRAWFORD ENERGY				RECEIVED:	07/29/83	JA: TX			
8347271	F-09-070557	4219700000		102-2		KYLE 3	KYLE (MISS)	365.0	LONE STAR GAS CO
-CREDO OIL & GAS INC				RECEIVED:	07/29/83	JA: TX			
8347110	F-7B-069746	4213334524		102-4		L B JONES #2 (18778)	ADAMS (DUFFER LOWER)	11.0	LONE STAR GAS CO
-CREWS OIL CO				RECEIVED:	07/29/83	JA: TX			
8347154	F-7C-78260	4239932212		102-4		JAYROE #1	CREWS (FRY LOWER)	0.5	LONE STAR GAS CO
-CYCLONE EXPLORATION INC				RECEIVED:	07/29/83	JA: TX			
8347120	F-7C-69773	4243532961		103	107-TF	JOHN D FIELDS #3-6B-B	SAWYER (CANYON)	120.0	EL PASO NATURAL G
-DALLAS ENERGY DEVELOPMENT CORP				RECEIVED:	07/29/83	JA: TX			
8347016	F-7B-068922	4213334489		102-4		CHAMBLISS #1	GREEN SHOW (UPPER CAD	35.0	EL PASO HYDROCARB
-DANIELS ENERGY CO				RECEIVED:	07/29/83	JA: TX			
8347131	F-10-69842	4217931371		103		MCKNIGHT #1	PANHANDLE	0.0	CABOT PIPELINE CO
-DELAWARE VISA ENERGY CORP				RECEIVED:	07/29/83	JA: TX			
8347263	F-09-070519	4207731946		103		SANZENBACHER A-1	LUTZ (CADDO)	11.2	FAGADAU ENERGY CO
-DELTA OIL & GAS CO				RECEIVED:	07/29/83	JA: TX			
8347066	F-7B-069443	4242900000		108		JEFFREYS- SLEMMONS #1 RRC #NA	STEPHENS COUNTY REGUL	0.0	LONE STAR GAS CO
8347125	F-7B-69795	4242933550		102-4		JOHN GRAY ESTATE #2	CADDO (STRAWN)	0.0	LONE STAR GAS CO
8347266	F-7B-070535	4242900000		108		JUDITH WINSTON KIGHT "B" RRC #14485	STEPHENS COUNTY REGUL	0.0	LONE STAR GAS CO
8347126	F-7B-69796	4242933077		102-4		SARAH ELLIS "B" #2	ELLIS (CONGL)	0.0	GREAT WESTERN GAS
-DISCOVERY OPERATING INC				RECEIVED:	07/29/83	JA: TX			
8347020	F-7C-068983	4241331305		102-2	103	LIN "F" #1	W D D (CANYON)	0.0	FARMLAND INDUSTRI
8347020	F-7C-068983	4241331305		107-TF		LIN "F" #1	W D D (CANYON)	0.0	FARMLAND INDUSTRI
-DMC OIL & GAS PRODUCERS				RECEIVED:	07/29/83	JA: TX			
8347197	F-09-70368	4249700000		102-4		MANNING #1	MANNING (5600)	150.0	TEXAS UTILITIES F
-DONALD C SLAWSON				RECEIVED:	07/29/83	JA: TX			
8347304	F-06-070648	4249931129		102-4		JEFF MCMANUS #1	QUITMAN (PETTIT)	18.2	FARMLAND INDUSTRI
-DYNASTY EXPLORATION & DEVELOPMENT I				RECEIVED:	07/29/83	JA: TX			
8347048	F-7C-069378	4245131078		102-4		PATE-DRUECKHAMMER #1	VERIBEST S E (HARKEY)	20.0	SUN EXPLORATION &
-EADS OPERATING CO				RECEIVED:	07/29/83	JA: TX			
8347279	F-04-070574	4235532057		103		STATE TRACT 683 #5	NUECES BAY W (4600)	19.0	HOUSTON PIPE LINE
8347278	F-04-070573	4235532058		103		STATE TRACT 683 #6	NUECES BAY W (4600)	25.0	HOUSTON PIPE LINE
-EL PASO NATURAL GAS COMPANY				RECEIVED:	07/29/83	JA: TX			
8347191	F-10-70353	4208726318		108		WISCHKAEMPER C #1	PANHANDLE-EAST	16.0	EL PASO NATURAL G
8347306	F-10-070653	4208726322		108		WOODALL #1	PANHANDLE EAST	19.0	EL PASO NATURAL G
-ELEXCO INC				RECEIVED:	07/29/83	JA: TX			
8347061	F-03-069526	4229330652		102-4		HINES GAS UNIT #1	PRAIRIE POINT (TRAVIS	100.0	LONE STAR GAS CO
-EMERALD PETROLEUM CORP				RECEIVED:	07/29/83	JA: TX			
8347287	F-09-070804	4207732921		103		DAVID C #1	BLUE GROVE (CADDO)	5.6	FAGADAU ENERGY CO
-ENERGETICS INC				RECEIVED:	07/29/83	JA: TX			
8347181	F-10-70334	4237530658		103		MASTERSON Y-2 (03839)	PANHANDLE (RED CAVE)	115.0	COLORADO INTERSTA
-ENERGY RESERVES GROUP INC				RECEIVED:	07/29/83	JA: TX			
8347208	F-10-70379	4234100000		108		ALLISON #1RC	WEST PANHANDLE (RED C	18.0	COLORADO INTERSTA
-ENRE CORP				RECEIVED:	07/29/83	JA: TX			
8347163	F-7B-70278	4213334609		102-4		MITCHAM ESTATE "H" #7	D R S SE (CONGL)	5.0	BENGAL GAS TRANSM
8347164	F-7B-70279	4213334744		102-4		MITCHAM ESTATE "H" #8	DRS S E (CONGL)	35.0	BENGAL GAS TRANSM
-ENTERPRISE RESOURCES INC				RECEIVED:	07/29/83	JA: TX			
8347107	F-03-069729	4208931319		102-4		MARIK GAS UNIT #1 (102773)	BERNARDO RANCH (10,47	150.0	SOUTH JERSEY EXPL
-EXXON CORPORATION				RECEIVED:	07/29/83	JA: TX			
8347029	F-04-069221	4204731104		102-2		AMADO TRAD 7 (ID PENDING)	SCOTT & HOPPER (7400-	200.0	TENNESSEE GAS PIP
8347028	F-04-069566	4226130500		102-4		CHARLES M ARMSTRONG 54-D	CANDELARIA (1-90)	304.0	NATURAL GAS PIPEL
8347053	F-08-069396	4200300000		108		FULLERTON CLEARFORK UNIT #1848	FULLERTON	2.0	PHILLIPS PETROLEU
8347031	F-08-069231	4200333199		103		FULLERTON CLEARFORK UNIT #539	FULLERTON	15.0	PHILLIPS PETROLEU
8347056	F-08-069407	4200333201		103		FULLERTON CLEARFORK UNIT #637	FULLERTON	15.0	PHILLIPS PETROLEU
8347030	F-08-069229	4200333267		103		FULLERTON CLEARFORK UNIT 2241	FULLERTON	15.0	PHILLIPS PETROLEU
8347032	F-08-069233	4247532780		103		G Q AVARY JR B #4	RHODA WALKER (CANYON	43.0	INTRATEX GAS CO
8347218	F-03-070424	4248132438		103		H C COCKBURN #123	MAGNET WITHERS	50.0	ARMCO STEEL CORP
8347050	F-08-069387	4200311006		108		J E PARKER A/C 1 #78	GOLDSMITH N (SAN ANDR	4.0	PHILLIPS PETROLEU
8347138	F-04-70161	4226130801		102-4		JOHN G KENEDY "C" 24-F	MIFFLIN (H-59)	490.0	NATURAL GAS PIPEL
8347038	F-04-069285	4226130786		103		JOHN G KENEDY JR "E" 43	EL PAISTLE (J-28 S)	183.0	NATURAL GAS PIPEL
8347280	F-02-070581	4202531545		103		L D THOMSON B-16 103483	BURKES RIDGE (GRETA)	431.8	TRUNKLINE GAS CO
8347129	F-04-69830	4204731242		102-4		MCGILL BROS 495 (ID PENDING)	KELSEY DEEP (ZONE 25	62.0	TRUNKLINE GAS CO
8347034	F-08-069235	4200333428		103		MEANS/SAN ANDRES/UNIT #6170	MEANS	15.0	PHILLIPS PETROLEU
8347033	F-08-069234	4200333424		103		MEANS/SAN ANDRES/UNIT #6466	MEANS	15.0	PHILLIPS PETROLEU
8347057	F-08-069408	4200333423		103		MEANS/SAN ANDRES/UNIT 6266	MEANS	15.0	PHILLIPS PETROLEU
8347137	F-04-70142	4224700000		108		MRS A M K BASS "B" 14 (075571)	KELSEY DEEP (8150)	10.0	TRUNKLINE GAS CO
8347029	F-04-069567	4226130429		102-4		MRS S K EAST 94-D (ID PENDING)	RITA (9-A SEG 2)	216.0	NATURAL GS PIPELI
8347051	F-8A-069388	4216503219		108		P G NORTHRUP #2	ROBERTSON N (CLEAR FO	2.0	PHILLIPS PETROLEU
8347097	F-8A-069699	4216532944		103		ROBERTSON CLEARFORK UNIT #6201	ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8347223	F-04-070441	4226130411		102-4		SARITA FIELD OIL & GAS 138-D 09310	SARITA (6-8)	50.0	NATURAL GAS PIPEL
8347222	F-04-070440	4226130750		103		SARITA FIELD OIL & GAS 180 10098	SARITA (3-CE)	150.0	NATURAL GAS PIPEL
8347166	F-04-70286	4204730870		103		SCOTT & HOPPER 33 (104955)	SCOTT & HOPPER (6700)	228.0	TENNESSEE GAS PIP
8347052	F-08-069389	4208301287		108		ST UNIVERSITY QUEEN CONS #2841	MC FARLAND (QUEEN)	1.0	PHILLIPS PETROLEU
8347039	F-03-069289	4207131424		103		TRINITY BAY STATE UNIT #1 #121	TRINITY BAY W (FRIO 7	65.0	ARMCO STEEL CORP
8347192	F-03-70350	4220131337		103		WEBSTER FIELD UNIT #162	WEBSTER	263.0	HOUSTON PIPELINE
8347191	F-03-70349	4220131528		103		WEBSTER FIELD UNIT #2408	WEBSTER	83.0	HOUSTON PIPELINE
-FALCON PETROLEUM COMPANY				RECEIVED:	07/29/83	JA: TX			
8347111	F-10-69749	4235731360		103		ROGERS O C #1	FARNSWORTH-CONNER (DE	0.0	PHILLIPS PETROLEU
-FEAGAN ENERGY INC				RECEIVED:	07/29/83	JA: TX			
8347068	F-7B-069481	4244132392		103		C R TITTLE #2	SAM W (STRAWN)	36.0	PALO DURO PIPELIN
-FORTUNE PRODUCTION CO				RECEIVED:	07/29/83	JA: TX			
8347265	F-7C-070534	4223532096		103		MURPHEY "1221" #7	CAL SOUTH (CANYON)	79.2	FARMLAND INDUSTRI
-FRANKS PETROLEUM INC ETAL				RECEIVED:	07/29/83	JA: TX			
8347018	F-06-068925	4220331840		102-4		LITTLE-MEAD #1	HARLETON NORTH-EAST (	75.0	TEJAS GAS CORP
-GATHINGS OIL INC				RECEIVED:	07/29/83	JA: TX			
8347059	F-04-069486	4213136177		102-4		R G DELUNA #12-C	DELUNA (HOCKLEY 4532'	100.0	UNITED TEXAS TRAN
8347058	F-04-069484	4213136182		102-4		R G DELUNA #13	DELUNA (YEGUA 5100')	350.0	UNITED TEXAS TRAN
8347102	F-04-069711	4213136183		102-4		R G DELUNA #14	DELUNA (YEGUA 4930')	180.0	UNITED TEXAS TRAN
-GETTY OIL COMPANY				RECEIVED:	07/29/83	JA: TX			
8347104	F-7B-069721	4243300000		108		FLOWERS CANYON SAND UNIT #220	FLOWERS (CANYON SAND)	0.3	CITIES SERVICE OI
-GLACIER ENERGY CORP				RECEIVED:	07/29/83	JA: TX			
8347015	F-02-068919	4217500000		102-4		GLACIER #1 BETHKE-KARNEI G U	ANDER (FRIO 3150)	90.0	HOUSTON PIPE LINE
-GREAT WEST OPERATING CO INC				RECEIVED:	07/29/83	JA: TX			
8347153	F-09-70244	4207732784		102-4		FULLER #1 RRC #23087	BUFFALO SPRINGS SE (E	91.0	TEXAS UTILITIES F
-GULF OIL CORPORATION				RECEIVED:	07/29/83	JA: TX			
8347236	F-03-070460	4204130463		103		BENNETT UNIT 1 WELL #1	KURTEN (AUSTIN CHALK)	10.0	PRODUCERS GAS CO
8347292	F-03-070626	4204130509		102-2		BUSEY UNIT I #1	KURTEN (WOODBINE)	10.9	PRODUCERS GAS CO
8347290	F-03-070624	4215731403		103		F I BOOTH ETAL -A- WELL #55	THOMPSON	82.1	UNITED TEXAS TRAN
8347291	F-03-070625	4215731357		102-4		MOORE-KIRSCH UNIT #1	MOORES ORCHARD (YEGUA	23.0	UNITED TEXAS TRAN
8347132	F-03-69865	4204130566		102-2		OPERSTENY UNIT II WELL #1	KURTEN (BUDA)	42.7	PRODUCERS GAS CO
-HAILEY ENERGY				RECEIVED:	07/29/83	JA: TX			
8347098	F-7B-069703	4213333957		102-4		MCCAULEY #1 (RRC #104110)	DICK WYATT (DUFFER)	84.0	EL PASO HYDROCARB
8347099	F-7B-069704	4209331067		103		WHITE #1	COMANCHE COUNTY REGUL	108.0	LONE STAR GAS CO
-HARRIS R FENDER				RECEIVED:	07/29/83	JA: TX			
8347070	F-06-069568	4242330666		102-4		LONIE B BRADY #1	DRISKELL LAKE (RODESS	38.0	LONE STAR GAS CO
-HILL PRODUCTION CO-WISCONSIN				RECEIVED:	07/29/83	JA: TX			
8347019	F-03-068961	4204130920		102-2		MCDONALD #1	KURTEN (BUDA)	0.0	FERGUSON CROSSING
-HILLIARD OIL & GAS INC				RECEIVED:	07/29/83	JA: TX			
8347109	F-8A-069739	4211531793		102-2		NORET #1	KEY WEST F	43.0	PHILLIPS PETROLEU
-HLH PETROLEUM CORP				RECEIVED:	07/29/83	JA: TX			
8347084	F-7B-069629	4225300000		102-4		TINER ZUMWALT #2-279	LOS COLINAS (CANYON R	50.0	CONOCO INC
8347083	F-7B-069628	4225300000		102-4		TINER ZUMWALT 3-279	LOS COLINAS (CANYON R	50.0	CONOCO INC
-HNG OIL COMPANY				RECEIVED:	07/29/83	JA: TX			
8347054	F-04-069397	4247932544		108		HIRSCH ESTATE "857" #1	BIG COWBOY (LOBO)	15.0	HOUSTON PIPE LINE
-HOOVER B L JR				RECEIVED:	07/29/83	JA: TX			
8347185	F-10-70336	4217931153		103		J B BOWERS "B" #4 (ID# 04936)	PANHANDLE GRAY	125.0	CABOT PIPELINE CO
-IMC EXPLORATION COMPANY				RECEIVED:	07/29/83	JA: TX			
8347149	F-8A-70210	4211531784		102-4		NOWELL #1	DEROEN (MISSISSIPPIAN	0.0	TEXACO INC
-J A LEONARD				RECEIVED:	07/29/83	JA: TX			
8347252	F-03-070486	4205100000		102-4		COFFIELD "D" #3	INEZ JAMESON (NAVARRO	27.0	FERGUSON CROSSING
8347254	F-03-070488	4205100000		103		COFFIELD "E" #5	CHRIESMAN	31.0	FERGUSON CROSSING
8347253	F-03-070487	4205100000		102-4		COFFIELD WINSTON "A" #5	INEZ JAMESON (NAVARRO	43.0	FERGUSON CROSSING
-J M HUBER CORPORATION				RECEIVED:	07/29/83	JA: TX			
8347282	F-10-070586	4234130829		103		FULLER #14	PANHANDLE	7.0	COLORADO INTERSTA
-JAMES E HOLDEN				RECEIVED:	07/29/83	JA: TX			
8347262	F-04-070514	4235532140		102-4		MORGAN #3-B	WILDCAT	109.0	VICTORIA GAS CORP
-KILLAM & HURD LTD				RECEIVED:	07/29/83	JA: TX			
8347302	F-04-070640	4247933484		102-4		KILLAM & HURD - BRUMI-TULE WELL #6	RETAMA WEST (WILCOX 4	0.0	
-KLH OIL & GAS INC				RECEIVED:	07/29/83	JA: TX			
8347251	F-7B-070478	4204933510		102-4		G W PICKETT #5	CHAMBERS (CONGL)	1000.0	EL PASO HYDROCARB
-L & B OIL CO INC				RECEIVED:	07/29/83	JA: TX			
8347209	F-08-70405	4217331362		102-4		EDITH BOOKS #1-10	ANTELOPE (STRAWN)	200.0	PHILLIPS PETROLEU
8347196	F-08-70367	4217331369		102-4		HANSON UNIT #1	ANTELOPE (STRAWN)	200.0	PHILLIPS PETROLEU
-L M YOUNG				RECEIVED:	07/29/83	JA: TX			
8347037	F-7B-069274	4204933403		102-4		R J GODDALL "B" #5	DALE (STRAWN LOWER)	520.0	EL PASO HYDROCARB
8347139	F-7B-70165	4204932120		103		RONNIE BELL #1B	BROWN COUNTY REGULAR	22.0	BROWN INDUSTRIAL
-LAYTON ENTERPRISES INC				RECEIVED:	07/29/83	JA: TX			
8347216	F-8A-070418	4207931655		103		REED WRIGHT #E-6	LEVELLAND	8.9	CITIES SERVICE CO
-LEONARD BROTHERS OPERATING CO				RECEIVED:	07/29/83	JA: TX			
8347124	F-7B-69794	4214330633		102-4		S E GARY #2	BYRNES (DUFFER)	0.0	CORONADO TRANSMIS
-LYRIC ENERGY INC				RECEIVED:	07/29/83	JA: TX			
8347203	F-10-70383	4217931272		103		FOWLER #1	PANHANDLE EAST	0.0	PHILLIPS PETROLEU
-M BRAD BENNETT INC & RKH LTD				RECEIVED:	07/29/83	JA: TX			
8347179	F-08-70328	4238931387		102-4		COLLIE "B" #6	COLLIE (DELAWARE)	10.9	INTRATEX GAS CO
-MAJOR PETROLEUM CORP				RECEIVED:	07/29/83	JA: TX			
8347067	F-7C-069455	4239932717		103		B MIKESKA #1A 09997	BAYS FRY SAND	6.0	UNION TEXAS PETRO
-MARALO INC				RECEIVED:	07/29/83	JA: TX			
8347178	F-08-70325	4200333457		103		MILES "C" #1	DEEP ROCK (PENN)	36.5	PHILLIPS PETROLEU
-MARATHON OIL COMPANY				RECEIVED:	07/29/83	JA: TX			
8347214	F-7C-070416	4246100000		108		BENEDUM SPRABERRY UNIT #1406	BENEDUM SPRABERRY UNI	7.0	UNION TEXAS PETRO
8347215	F-7C-070417	4246100000		108		BENEDUM SPRABERRY UNIT #8501	BENEDUM SPRABERRY UNI	6.5	UNION TEXAS PETRO
8347213	F-08-70415	4210300000		108		M L BARNSLEY #4	SAND HILLS (MCKNIGHT)	11.0	WARREN PETROLEUM
-MAY PETROLEUM INC				RECEIVED:	07/29/83	JA: TX			
8347065	F-7C-069439	4238332250		103		J D CHRISTY #5	SPRABERRY (TREND AREA	18.3	PHILLIPS PETROLEU
8347041	F-06-069317	4207330468		102-4		MCVICKER #1	LONE OAK (RODESSA)	365.0	VICTORIA GAS CORP
-MCCANN CORP				RECEIVED:	07/29/83	JA: TX			
8347308	F-08-070658	4222733010		103		JANE READ "2" #1	COAHOMA N (FUSSEL)	70.2	GETTY OIL CO
-MCCORMICK OPERATING CO				RECEIVED:	07/29/83	JA: TX			
8347069	F-03-069546	4224500000		102-4		B E WILBER #1	DEVIL (DISCORBIS)	80.0	HOUSTON PIPE LINE
-MCMURREY PETROLEUM INC				RECEIVED:	07/29/83	JA: TX			
8347024	F-03-069160	4204130887		102-4	103	PHILLIPS #1 RRC PERMIT #185399	BRYAN	0.0	FERGUSON CROSSING
-MEADCO PROPERTIES				RECEIVED:	07/29/83	JA: TX			
8347063	F-7C-069423	4223531348		108		SHEEN #1 3084 RRC #081184	ELA SUGG (WOLFCAMP)	12.0	NORTHERN NATURAL
8347105	F-7C-069723	4223532081		102-2		UT-39 A #2	ANDREW A (CANYON)	0.0	FARMLAND INDUSTRI
-MILLER ENERGY INC				RECEIVED:	07/29/83	JA: TX			
8347094	F-05-069673	4228930549		102-4	103	WINKLER "A" #1	CENTERVILLE SE	350.0	LEON COUNTY TRANS
-MINDEN OIL & GAS INC				RECEIVED:	07/29/83	JA: TX			
8347076	F-03-069561	4208931345		102-4		COYLE-BALUSEK #1 (16511)	GARWOOD S E (Y-3)	100.0	LONE STAR GAS CO
-MITCHELL ENERGY CORPORATION				RECEIVED:	07/29/83	JA: TX			
8347167	F-09-70291	4249732507		103		T C W B #38 17160	CAP YATES (CONSOLIDAT	295.1	NATURAL GAS PIPEL
8347273	F-09-070564	4249732537		103		TARRANT COUNTY WATERBOARD #42 17160	CAP YATES (CONSOLIDAT	30.5	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	07/29/83	JA: TX			
8347230	F-04-070459	4224900000		108		C F H BLUCHER #36	LA GLORIA/HELEN	9.5	NATURAL GAS PIPEL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8347250	F-04-070476	4224930541		108		C F H BLUCHER B #3	LOHMAN DEEP/B-5D	16.8	NATURAL GAS PIPEL
8347231	F-03-070451	4208900128		108		CHESTERVILLE UNIT #2	CHESTERVILLE/COCKFIEL	5.8	TENNESSEE GAS PIP
8347229	F-08-070449	4210331530		108		D K GLENN A #1	ABELL PERMIAN GENERAL	10.8	PERRY PIPELINE CO
8347232	F-8A-070452	4216502597		108		H&J SECTION 219 #19	SEMINOLE/YATES	9.2	WESTAR TRANSMISSI
8347228	F-10-070448	4217900000		108		J F CUBINE #2	PANHANDLE EAST	11.6	PHILLIPS PETROLEU
8347226	F-10-070446	4246300000		108		LULA LAYCOCK B #B-1	PANHANDLE EAST	9.2	WARREN PETROLEUM
8347245	F-08-070471	4230130584		102-4		M H REED #1	DIMMIT (CHERRY CANYON	6.2	INTRATEX GAS CO
8347233	F-10-070454	4208760306		108		MCDOWELL HEIRS #1	PANHANDLE EAST	7.1	WARREN PETROLEUM
8347247	F-8A-070473	4221933787		103		NORTH CENTRAL LEVELLAND UNIT #374	LEVELLAND	5.5	AMOCO PRODUCTION
8347246	F-8A-070472	4221935797		103		NORTH CENTRAL LEVELLAND UNIT #382	LEVELLAND	2.2	AMOCO PRODUCTION
8347049	F-04-069371	4235531779		102-4		O L CARDWELL UNIT #1	CALALLEN SW (5530)	47.8	CHANNEL INDUSTRIE
8347157	F-08-70267	4200333241		103		SHAFTER LAKE SAN ANDRES UNIT #308	SHAFTER LAKE (SAN AND	0.4	PHILLIPS PETROLEU
8347156	F-08-70266	4200333434		103		SHAFTER LAKE SAN ANDRES UNIT #317	SHAFTER LAKE (SAN AND	0.4	PHILLIPS PETROLEU
8347158	F-08-70268	4200333435		103		SHAFTER LAKE SAN ANDRES UNIT #318	SHAFTER LAKE (SAN AND	0.4	PHILLIPS PETROLEU
8347234	F-08-070455	4237110498		108		SIBLEY UNIT #2-U	COYANOSA/MISS 10475	17.8	WESTAR TRANSMISSI
8347227	F-08-070447	4237131697		108		VOLLMAR SEC 35 #3	FOUR C/CLEARFORK MIDD	9.6	NORTHERN GAS PROD
8347243	F-08-070469	4230130401		102-4		W D JOHNSON #3	DIMMIT (CHERRY CANYON	32.0	INTRATEX GAS CO
8347249	F-08-070475	4230130400		102-4		W D JOHNSON D #4	DIMMIT (CHERRY CANYON	159.0	INTRATEX GAS CO
8347248	F-08-070474	4230130394		102-4		W D JOHNSON E #7	DIMMIT (CHERRY CANYON	48.2	INTRATEX GAS CO
8347242	F-08-070467	4230130382		102-4		W D JOHNSON F #2	DIMMIT (CHERRY CANYON	27.7	INTRATEX GAS CO
8347241	F-08-070466	4230130380		102-4		W D JOHNSON F #4	DIMMIT (CHERRY CANYON	82.9	INTRATEX GAS CO
8347240	F-08-070465	4230130393		102-4		W D JOHNSON F #5	DIMMIT (CHERRY CANYON	34.7	INTRATEX GAS CO
8347239	F-08-070464	4230130395		102-4		W D JOHNSON F #6	DIMMIT (CHERRY CANYON	30.8	INTRATEX GAS CO
8347244	F-08-070470	4230130402		102-4		W D JOHNSON L #5	DIMMIT (CHERRY CANYON	84.3	INTRATEX GAS CO
-MORROW RESOURCES INC				RECEIVED:	07/29/83	JA: TX			
8347025	F-7C-069161	4245131174		102-2	103	BROWN "C" #7	K W B (STRAWN)	0.0	LONE STAR GAS CO
8347152	F-7C-70241	4245131209		102-2	103	BROWN "F" #3	K W B (STRAWN)	0.0	LONE STAR GAS CO
-NATIONAL OIL COMPANY				RECEIVED:	07/29/83	JA: TX			
8347130	F-04-69832	4213135827		102-4		DUVAL COUNTY RANCH CO #2	LOPEZ NW (1470 JACKSO	72.0	MAK-GAS TRANSMISS
-NATURAL GAS ANADARKO INC				RECEIVED:	07/29/83	JA: TX			
8347095	F-10-069683	4235731270		102-4		MARIE 1-62	PERRYTON (MERAMAC)	70.0	TRANSWESTERN PIPE
-NEUMIN PRODUCTION CO				RECEIVED:	07/29/83	JA: TX			
8347128	F-02-69828	4205731228		103		STATE TRACT 176 WELL 4-D	STEAMBOAT PASS	391.0	ALUMINUM CO OF AM
8347127	F-02-69807	4205731249		102-4		STATE TRACT 196 #1	GRASS ISLAND W	488.0	ALUMINUM CO OF AM
-ORIGINALA PETROLEUM CORP				RECEIVED:	07/29/83	JA: TX			
8347205	F-09-70397	4207732627		102-4		O MOORE #1	CLAY COUNTY (ATOKA 60	146.0	TEXAS UTILITIES F
8347198	F-7B-70369	4236332919		103		PADGETT RANCH #10	T J B (CONGL 4200')	0.0	SOUTHWESTERN GAS
8347199	F-7B-70370	4236332918		103		PADGETT RANCH #9	T J B (CONGL 4200')	11.0	SOUTHWESTERN GAS
-P & R OIL INC				RECEIVED:	07/29/83	JA: TX			
8347040	F-7B-069296	4205932619		103		WOLFE #1 (16436)	NICHOLAS (DUFFER)	240.0	EL PASO HYDROCARB
-PAN-TERRA OPERATING INC				RECEIVED:	07/29/83	JA: TX			
8347121	F-7C-69774	4239932608		103		KASEY #1	SYKES MORRIS	120.0	LONE STAR GAS CO
-PANHANDLE PRODUCING COMPANY				RECEIVED:	07/29/83	JA: TX			
8347224	F-10-070443	4223300000		108		SOHIO-SANFORD C #2 (8238810)	WEST PANHANDLE	4.0	COLORADO INTERSTA
-PAUL E CAMERON JR INC				RECEIVED:	07/29/83	JA: TX			
8347096	F-03-069684	4218500000		102-4		MORAH - B I COLE #1	IOLA (WOODBINE 9700)	292.0	MORGAS CO
8347171	F-03-70308	4218500000		102-4		W C OVERBY #1	BEDIAS (GEORGETOWN)	0.0	MORGAS CO
-PENNZOIL PRODUCING COMPANY				RECEIVED:	07/29/83	JA: TX			
8347103	F-06-069712	4206730359		103	107-TF	FEE 675 #1	KILDARE/COTTON VALLEY	0.0	
-PETROLEUM EQUITIES CORP				RECEIVED:	07/29/83	JA: TX			
8347272	F-7C-070561	4210500000		108		HENDERSON "B" #1	OZONA (CANYON SAND)	11.0	NORTHERN NATURAL
-PETRUS OPERATING CO INC				RECEIVED:	07/29/83	JA: TX			
8347086	F-05-069641	4216130784		102-4		CARPENTER #A-2	INGRAM TRINITY (RODES	8.0	DELHI GAS PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	07/29/83	JA: TX			
8347284	F-7C-070599	4238301161		108		(01621) STOUT A #1	SPRABERRY (TREND AREA	20.0	NORTHERN NATURAL
8347283	F-08-070597	4200304492		108		(08387) BUM A WELL #1	GOLDSMITH (5600)	20.0	EL PASO NATURAL G
8347285	F-08-070600	4200304573		108		(09590) UNIVERSITY T #1	MARTIN (CLEAR FORK SO	4.0	EL PASO NATURAL G
8347286	F-08-070601	4249531028		108		(21555) MCCABE FP #52	HALLEY	2.0	EL PASO NATURAL G
8347208	F-08-70402	4213520606		108		(21556) NORTH PENWELL UNIT #157	PENWELL	2.0	EL PASO NATURAL G
8347207	F-08-70401	4213520182		108		(21556) NORTH PENWELL UNIT #28	PENWELL	3.0	EL PASO NATURAL G
8347206	F-08-70400	4232931140		102-4		MCALISTER B #3	MID-MAR EAST (FUSSELM	32.0	NORTHERN NATURAL
-PICKENS CO INC				RECEIVED:	07/29/83	JA: TX			
8347255	F-04-070491	4227331754		102-4		H LEHMAN #2 GAS UNIT #2	RICARDO NORTH (8000 F	371.0	HOUSTON PIPELINE
-POGO PRODUCING COMPANY				RECEIVED:	07/29/83	JA: TX			
8347122	F-7C-69792	4210534050		102-4		UNIVERSITY 8 #1	BLOCK 51 (STRAWN)	215.0	
-PREMCO PETROLEUM INC				RECEIVED:	07/29/83	JA: TX			
8347150	F-7B-70212	4213333179		102-2		W H SMITH #1 - 098454	EASTLAND COUNTY REGUL	54.0	EL PASO HYDROCARB
-QUANAH DRILLING & EXPLORATION INC				RECEIVED:	07/29/83	JA: TX			
8347021	F-7B-069043	4236732281		102-4		WOODFIN #1 I D NUMBER 105613	MARMAC (MARBLE FALLS)	45.0	TEXAS UTILITIES F
-R A W ENERGY CORP				RECEIVED:	07/29/83	JA: TX			
8347087	F-7B-069643	4236732487		102-4		WILEY "A" #2-B	DICEY N (BIG SALINE C	300.0	TEXAS UTILITIES F
-R R CO				RECEIVED:	07/29/83	JA: TX			
8347140	F-10-70178	4217931246		103		WORL #4 (ID# 00504)	PANHANDLE GRAY	98.0	PHILLIPS PETROLEU
-RANKIN OIL CO				RECEIVED:	07/29/83	JA: TX			
8347141	F-08-70184	4200332143		103		PARKER #3	FUHRMAN-MASCHO	1.0	PHILLIPS PETROLEU
-REISS ROYAL W				RECEIVED:	07/29/83	JA: TX			
8347123	F-7B-69793	4213300000		108		L A LOWRANCE #2	EASTLAND COUNTY REGUL	0.0	LONE STAR GAS CO
-REMDOVA OIL CO				RECEIVED:	07/29/83	JA: TX			
8347281	F-08-070582	4216532525		103		NORMAN #1	MEANS N (QUEEN SAND)	16.0	PHILLIPS PETROLEU
-RICHEY & CO INC				RECEIVED:	07/29/83	JA: TX			
8347042	F-7B-069322	4213334825		102-4		D S RANEY #1	REB (MARBLE FALLS)	59.0	ENSERCH EXPLORATI
8347064	F-7B-069430	4213334862		102-4		V DANIEL	REB (MARBLE FALLS)	37.0	ENSERCH EXPLORATI
-RIDGEWAY OIL EXPL & DEVELOPMENT INC				RECEIVED:	07/29/83	JA: TX			
8347148	F-7B-70209	4213334337		102-4		TARVER "A" #1 (LEASE NO 19061)	HAWK EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347294	F-7B-070628	4213334429		102-4		TARVER "A" #10 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347295	F-7B-070629	4213334464		102-4		TARVER "A" #14 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347296	F-7B-070630	4213334661		102-4		TARVER "A" #15 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347147	F-7B-70208	4213334335		102-4		TARVER "A" #2 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347297	F-7B-070631	4213334467		102-4		TARVER "A" #23 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347298	F-7B-070632	4213334468		102-4		TARVER "A" #24 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347299	F-7B-070633	4213334469		102-4		TARVER "A" #25 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347300	F-7B-070634	4213334565		102-4		TARVER "A" #28 (19061)	HAWK-EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
8347293	F-7B-070627	4213334428		102-4		TARVER "A" #5 (19061)	HAWK EYE (ADAMS BRANC	7.5	SOUTHWESTERN GAS
-ROBERT KLABZUBA				RECEIVED:	07/29/83	JA: TX			
8347091	F-7C-069656	4239932471		102-2		BLAIR #1 #09842	FUZZY CREEK (GOEN)	100.0	
8347090	F-7C-069654	4209530656		102-2		SCHWETHELM CHESTER #4 #09531	FUZZY CREEK (GOEN)	100.0	J-W OPERATING CO
-ROBERT M WYNNE				RECEIVED:	07/29/83	JA: TX			
8347301	F-09-070639	4250300080		103		SENTERS A-1 RRC 22445	DOLLIE SMITH STRAWN (	405.0	SUN GAS TRANSMISS
-ROCKWOOD RESOURCES INC				RECEIVED:	07/29/83	JA: TX			
8347204	F-02-70388	4223931781		102-4		ANDOVER #1 ID NO 105219	LAWARD NORTH (5620)	8.0	HOUSTON PIPE LINE
-S K ROGERS OIL CO				RECEIVED:	07/29/83	JA: TX			
8347108	F-8A-069736	4221933580		103		LAWSON "A" #5	LEVELLAND	6.0	CABOT PIPELINE CO
-S R G OIL CORP				RECEIVED:	07/29/83	JA: TX			
8347134	F-7B-69870	4213334247		102-4		WALCOTT #1	MATIC (RANGER)	0.0	EL PASO HYDROCARB

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-SANCHEZ-OBRIEN OIL & GAS CORP				RECEIVED:	07/29/83	JA: TX			
8347060	F-04-069489	4213135187		102-4		L T OLIVEIRA API NO 42 131 35187	(PROPOSED) NOROSENA C	0.0	UNITED GAS PIPELI
-SCANDRILL INC				RECEIVED:	07/29/83	JA: TX			
8347118	F-09-69764	4250336652		102-4		CHENEY "B" #2	VAUGHAN (1400')	92.0	MID-STATE GAS COR
8347023	F-7B-069157	4244733446		102-2		PUTNAM #30	THROCKMORTON COUNTY R	19.3	THROCKMORTON GAS
-SHELL OIL CO				RECEIVED:	07/29/83	JA: TX			
8347028	F-01-069220	4231131837		102-4		BRACKEN #12	A W P (OLMOS)	100.0	HPI TRANSMISSION
8347022	F-01-069153	4231131761		102-4		L S MCCLAUGHERTY "A" #2	A W P (OLMOS)	100.0	HPI TRANSMISSION
-SMITH PETROLEUM CO				RECEIVED:	07/29/83	JA: TX			
8347026	F-03-069207	4218530333		102-4		SELECTED LANDS 18 UNIT 4 #2	IOLA SOUTH (SUBCLARKS	0.0	WELLHEAD VENTURES
-SOHIO PETROLEUM CO				RECEIVED:	07/29/83	JA: TX			
8347321	F-7C-070687	4246131566		103		F G KEELE #2	SPRABERRY (TREND AREA	0.0	EL PASO NATURAL G
-SOL ENERGY INC				RECEIVED:	07/29/83	JA: TX			
8347270	F-04-070549	4213100000		108		LILIA GARCIA #1	SEJITA EAST (800)	7.0	VALLEY GAS TRANSM
-SOUTHERN ROYALTY INC				RECEIVED:	02/29/83	JA: TX			
8347035	F-04-069237	4240900000		102-4		HANSEN #1	EAST MATKIS (BALME)	320.0	HOUSTON PIPE LINE
-STAHL PETROLEUM CO				RECEIVED:	07/29/83	JA: TX			
8347202	F-10-70382	4217931297		103		FOWLER #2	PANHANDLE EAST	0.0	PHILLIPS PETROLEU
8347201	F-10-70381	4217930784		108		TURMAN #2	EAST PANHANDLE	0.0	PHILLIPS PETROLEU
-SUBURBAN PROPANE EXPLORATION CO INC				RECEIVED:	07/29/83	JA: TX			
8347159	F-01-70269	4216500000		108		FRED D WEST #1	WEST BIG FOOT/GAS	18.8	TRANSCONTINENTAL
8347160	F-01-70270	4216300000		108		MARTHA BERRY #7	WEST BIG FOOT/GAS	20.8	TRANSCONTINENTAL
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	07/29/83	JA: TX			
8347317	F-04-070681	4224700000		108		A C JONES #59	JONES	3.0	FLORIDA GAS TRANS
8347326	F-04-070703	4224700000		108		A C JONES #64	JONES	19.0	FLORIDA GAS TRANS
8347320	F-8A-070684	4250132330		103		BENNETT RANCH UNIT #337	WASSON	2.0	SHELL OIL CO
8347319	F-04-070683	4242700000		108		C V DE LOPEZ #5	SUN	14.0	TRANSCONTINENTAL
8347315	F-04-070679	4242700000		108		CHAPOTAL LAND CO -A- #2	YTURRIA	19.0	FLORIDA GAS TRANS
8347329	F-04-070706	4242700000		108		E L ALVAREZ #1	STARR COUNTY NE	19.0	FLORIDA GAS TRANS
8347313	F-09-070677	4227531290		102-4		FANT EST "2" #3	FANT	12.0	SUN GAS TRANSMISS
8347314	F-09-70678	4227531356		102-4		FANT EST "58" #2	FANT	8.0	SUN GAS TRANSMISS
8347312	F-7C-070676	4210533994		103		HUDSPETH "B" #1	ADAMS BAGGETT RANCH (	2.0	TEXAS INTRAMARK G
8347327	F-04-070704	4242700000		108		I V MONTALVO -B- #12	SUN NORTH	9.0	FLORIDA GAS TRANS
8347311	F-7C-070674	4208131169		103		JAMESON REEF UNIT #8-14	JAMESON	35.0	LONE STAR GAS CO
8347328	F-04-070705	4242700000		108		L L GARCIA "B" #9	YTURRIA	10.0	FLORIDA GAS TRANS
8347316	F-04-070680	4235500000		108		MCCANN STATE UNIT -A- #4	ARNOLD DAVID	19.0	TRANSCONTINENTAL
8347257	F-02-070508	4246932021		103		MCFADDIN #1-59	MCFADDIN (TOM O'CONNO	267.0	TENNESS GAS PIPEL
8347310	F-7C-070673	4244330310		102-4		MCKAY CREEK "B" #2	MCKAY CREEK	91.0	EL PASO NATURAL G
8347258	F-08-070509	4213534105		103		NORTH LAWSON UNIT #13-9	LAWSON (SAN ANDRES)	8.0	PHILLIPS PETROLEU
8347318	F-04-070682	4224900000		108		SEELIGSON UNIT #1-40	SEELIGSON	17.0	TENNESSEE GAS PIP
8347260	F-08-070511	4246131993		103		SOUTHWEST MCELROY UNIT #48	MCELROY	9.0	PHILLIPS PETROLEU
8347261	F-08-070513	4246131996		103		SOUTHWEST MCELROY UNIT #50	MCELROY	6.0	PHILLIPS PETROLEU
8347259	F-8A-070510	4207931092		103		WRIGHT UNIT #12-42	LEVELLAND	2.0	CITIES SERVICE OI
-SUPERIOR OIL CO				RECEIVED:	07/29/83	JA: TX			
8347142	F-08-70186	4237134227		102-4	103	UNIVERSITY "19-10" #2	TUNIS CREEK (DEVONIAN	37.0	DELHI GAS PIPELIN
-SWEETGRASS ENERGY CORP				RECEIVED:	07/29/83	JA: TX			
8347161	F-09-70276	4233731939		103		STAGG &202	SUNSET (CONGLOMERATE)	50.0	NORTHWEST CENTRAL
-TEMPLETON ENERGY INC				RECEIVED:	07/29/83	JA: TX			
8347133	F-04-69866	4235532107		102-4		SCARBOROUGH #1	BANQUETE (L VICKSBURG	365.0	
-TENNECO OIL COMPANY				RECEIVED:	07/29/83	JA: TX			
8347194	F-08-70354	4247532788		103		G Q AVARY 132-1	RHODA WALKER (CANYON	8.0	
-TEXACO INC				RECEIVED:	07/29/83	JA: TX			
8347136	F-8A-70133	4221900000		108		BOB SLAUGHTER BLK #331	SLAUGHTER	0.4	AMOCO PRODUCTION
-TEXXON EXPLORATION CO				RECEIVED:	07/29/83	JA: TX			
8347027	F-10-069216	4206500000		103		WINTERS #1 42-065-31296	PANHANDLE (CARSON)	150.0	GETTY OIL CO
-THOMAS C CANAN				RECEIVED:	07/29/83	JA: TX			
8347225	F-7B-070444	4242933625		102-4		MORSE #1	MUNNERLYN (MISS)	36.0	WARREN PETROLEUM
-THOMAS D COFFMAN INC				RECEIVED:	07/29/83	JA: TX			
8347036	F-03-069248	4205100000		102-2		ROBERTSON UNIT #1 104771	BIG A (TAYLOR)	26.0	FERGUNSON CROSSIN
-THOMPSON J CLEO & JAMES CLEO JR				RECEIVED:	07/29/83	JA: TX			
8347045	F-7C-069342	4210500000		102-4		UNIVERSITY 31-28 #4	UNIVERSITY 31 (QUEEN)	61.0	PHILLIPS PETROLEU
8347046	F-7C-069343	4210534421		102-4		UNIVERSITY 31-9 #1	UNIVERSITY 31 (QUEEN)	370.0	PHILLIPS PETROLEU
-TOM BROWN INC				RECEIVED:	07/29/83	JA: TX			
8347267	F-08-070542	4231732695		103		AMOCO FLYNT #4	BREEDLOVE SOUTH (SPRA	13.8	NORTHERN GAS PROD
8347169	F-08-70302	4231732598		103		CAFFEY #2	SPRABERRY (TREND AREA	43.8	PHILLIPS PETROLEU
8347168	F-08-70301	4231732599		103		CAFFEY #3	SPRABERRY (TREND AREA	46.0	PHILLIPS PETROLEU
-TUCKER DRILLING COMPANY INC				RECEIVED:	07/29/83	JA: TX			
8347177	F-7C-70324	4223532075		103		HENRY LINDLEY "41" #4	ROCK PEN (CANYON)	75.6	NORTHERN NATURAL
-TXO PRODUCTION CORP				RECEIVED:	07/29/83	JA: TX			
8347106	F-7C-069725	4223532078		103		LINDLEY "40" #10	ROCK PEN	75.0	NORTHERN NATURAL
-UNION OIL COMPANY OF CALIF				RECEIVED:	07/29/83	JA: TX			
8347309	F-08-070673	4249531529		103		UNIVERSITY "25-20" #2	LITTLE JOE (WAR-WINK)	0.3	
-UNION TEXAS PETROLEUM				RECEIVED:	07/29/83	JA: TX			
8347062	F-7C-069527	4223532073		102-2	103	SUGG '2' #2	ANDREW A	49.0	FARMLAND INDUSTRI
-VAUGHN PETROLEUM INC				RECEIVED:	07/29/83	JA: TX			
8347303	F-7B-070643	4235331207		102-4		SIMMONS EST 19230	J&R (LOWER CADDO)	0.0	PALO DURO PIPELIN
-W D H OIL PROPERTIES INC				RECEIVED:	07/29/83	JA: TX			
8347055	F-7B-069405	4244132194		103		BURNS #1-127	JOCELYN-VARN SOUTH (F	50.0	LONE STAR GAS CO
-W J WHITT				RECEIVED:	07/29/83	JA: TX			
8347101	F-7B-069709	4208332895		102-4		4-W RANCH "A" #3	DUDLEY (CADDO)	30.0	EL PASO HYDROCARB
8347100	F-7B-069708	4208332896		102-4		4-W RANCH "A" #4	DUDLEY (CADDO)	30.0	EL PASO HYDROCARB
-W L BRUCE OPERATOR				RECEIVED:	07/29/83	JA: TX			
8347082	F-10-069620	4206531349		103		EVELYN #2 (ID# 05363)	PANHANDLE CARSON	45.0	GETTY OIL CO
-WAGNER & BROWN				RECEIVED:	07/29/83	JA: TX			
8347211	F-08-70408	4243131232		103		FLINT "B" #13-9	CONGER (PENN)	188.1	TEXAS UTILITIES F
8347210	F-08-70407	4243131231		103		FLINT "B" #14-9	CONGER (PENN)	67.6	TEXAS UTILITIES F
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	07/29/83	JA: TX			
8347238	F-08-070462	4210333139		103		M B MCKNIGHT #151	SAND HILLS (MCKNIGHT)	0.2	EL PASO NATURAL G
-WES-TEX DRILLING COMPANY				RECEIVED:	07/29/83	JA: TX			
8347307	F-7C-070655	4243532928		103	107-TF	VALLIANT #4	SAWYER (CANYON)	0.0	NORTHERN NATURAL
-WESLEY SENKEL INC				RECEIVED:	07/29/83	JA: TX			
8347186	F-09-70341	4250336757		102-4		LOFTIN #7	SENKEL (CADDO 4600) F	0.0	SOUTHWESTERN GAS
8347305	F-09-070652	4250336772		102-4		MCCLURG #1	SENKEL (CADDO 4600) F	0.0	SOUTHWESTERN GA P
-WESTLAND OIL DEVELOPMENT CORP				RECEIVED:	07/29/83	JA: TX			
8347289	F-7C-070612	4241331215		103		MARGARET D BYERS #1	HULLDALE WEST (HARKEY	73.8	LONE STAR GAS CO
8347288	F-10-070607	4221131968		102-4		MARY URSCHEL "73" #1	URSCHEL (CLEVELAND)	18.0	
-WILLIAMS OIL CO				RECEIVED:	07/29/83	JA: TX			
8347212	F-08-70410	4249531520		103		MCCURDY - MCCUTCHEON #1	KERMIT	10.0	PHILLIPS PETROLEU
-WILSON ENERGY INC				RECEIVED:	07/29/83	JA: TX			
8347323	F-8A-070689	4231732562		103		COOK #1	ACKERLY (DEAN SAND)	1.0	ADOBE OIL & GAS C
8347322	F-8A-070688	4231732573		103		COOK #2	ACKERLY (DEAN SAND)	1.0	ADOBE OIL & GAS C
8347089	F-08-069647	4232931071		102-4		HARVEY #1	BETTY SUE SOUTH (STRA	95.0	PHILLIPS PETROLEU
8347325	F-08-070691	4231732561		103		NAIL "D" #1	SPRABERRY (TREND AREA	1.0	ADOBE OIL & GAS C
8347324	F-08-070690	4231732576		103		NAIL "D" #2	SPRABERRY (TREND AREA	1.0	ADOBE OIL & GAS C
-WINN EXPLORATION/DULCE CO				RECEIVED:	07/29/83	JA: TX			
8347170	F-01-70305	4250731701		102-4		PRYOR RANCH #73	WINN-DULCE	0.0	NORTHERN NATURAL
-WY-VEL CORP				RECEIVED:	07/29/83	JA: TX			
8347180	F-10-70333	4206531358		103		HORN (053811) #1	PANHANDLE	1.5	KERR-MCGEE CORP
8347182	F-10-70335	4206531191		103		LUNDQUIST 'A' (03427) #2	PANHANDLE	0.5	GETTY OIL CO

[FR Doc. 83-23000 filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 951]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 17, 1983.

The following notices of determination were received from the indicated jurisdictional agenices by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in acordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS — VOLUME 951

ISSUED AUGUST 17, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
CALIFORNIA DEPARTMENT OF CONSERVATION									
-SANTA FE ENERGY PRODUCTS CO				RECEIVED:	08/01/83	JA: CA			
8347362	83-1-0001	0403721924		103		TU-186			
8347361	83-1-0002	0403721733		103		TU-123	TORRANCE	1.0	CHEVRON USA INC
8347360	83-1-0003	0403721925		103		TU-605	TORRANCE	2.0	CHEVRON USA INC
							TORRANCE	1.0	CHEVRON USA INC
LOUISIANA OFFICE OF CONSERVATION									
-DYNAMIC EXPLORATION INC				RECEIVED:	08/01/83	JA: LA			
8347388	83-2394	1704520667		102-4		BROWNELL KID #1	BAYOU PIGEON	328.0	TEXAS GAS TRANSMI
8347398	83-2393	1704520667		102-4		BROWNELL KID #1-D	BAYOU PIGEON	523.0	TEXAS GAS TRANSMI
-TEXACO INC				RECEIVED:	08/01/83	JA: LA			
8347386	83-0402	1701724910		102-4	103	BOBBY R HALE #1	CADDO PINE ISLAND	58.0	
8347387	83-0403	1701724910		102-4	103	CADDO LEVEE DISTRICT 9248 #2	CADDO PINE ISLAND	0.0	
-WHELESS INDUSTRIES INC				RECEIVED:	08/01/83	JA: LA			
8347389	83-0469	1702720191		102-2	107-TF	TIMSLEY #1 WHELESS-PELTO SMKCRBSUI	EAST DYKESVILLE	365.0	UNITED GAS PIPE L
MISSISSIPPI OIL & GAS BOARD									
-CHEVRON U S A INC				RECEIVED:	07/29/83	JA: MS			
8347354	33-83-137	2306720151		102-4		CLIFTON WALKER 2 UNIT 2-1	REEDY CREEK	342.0	R E WILLIAMS OIL
-GETTY OIL COMPANY				RECEIVED:	07/29/83	JA: MS			
8347357	13-83-119	2314700000		102-4		PITTMAN "C" #1	DEXTER	0.0	SOUTHERN NATURAL
-GULF OIL CORPORATION				RECEIVED:	07/29/83	JA: MS			
8347358	19-83-11	2307320255		103		C V COOPER #14	BAXTERVILLE	3.3	UNITED GAS PIPELI
-JOSEPH F FRITZ OPERATING CO				RECEIVED:	07/29/83	JA: MS			
8347356	100-82-448	2309120104		102-4		SANDY HOOK GAS UNIT 27 #1	WEST SANDY HOOK	839.0	SOUTHERN NATURAL
-LYONS PETROLEUM INC				RECEIVED:	07/29/83	JA: MS			
8347359	22-83-525	2306520203		107-DP		RIPPLE #1	VINTAGE	780.0	TENNESSEE GAS PIP
-MARATHON OIL COMPANY				RECEIVED:	07/29/83	JA: MS			
8347353	31-83-53	2303500000		108		UNIT SW 31 #2-T	MAXIE	15.3	UNITED GAS PIPE L
-PRUET PRODUCTION CO				RECEIVED:	07/29/83	JA: MS			
8347352	122-82-351	2302520036		102-4	103	JAMES E COOK 24-5 #1	CORINNE	180.0	
8347351	123-82-351	2302520035		102-4	103	WEYERHAEUSER 23-16 #1	CORINNE	180.0	
8347350	124-82-351	2302520042		102-4	103	WEYERHAEUSER 25-4 #1	CORINNE	180.0	
-SHELL OIL CO				RECEIVED:	07/29/83	JA: MS			
8347355	32-83-533	2311320145		102-4		BIGGERS UNIT #1	OLIVE	40.0	TRANSCONTINENTAL
-SONAT EXPLORATION COMPANY				RECEIVED:	08/01/83	JA: MS			
8347363	139-82	2309120158		102-4		HART #4	WEST SANDY HOOK	1334.0	SOUTHERN NATURAL
-UNION OIL COMPANY OF CALIF				RECEIVED:	07/29/83	JA: MS			
8347392	17-83-515	2314920030		102-2		BILLY R BROWN 20-11 #2	OAK RIDGE	644.0	
NORTH DAKOTA INDUSTRIAL COMMISSION									
-AMAREX INC				RECEIVED:	08/01/83	JA: ND			
8347375	781	3305301488		102-2		BECKEN #1	WILDCAT	350.0	
8347376	782	3305301424		102-2		FETTIG #1	WILDCAT	80.0	

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-BURNETT OIL CO INC				RECEIVED:	08/01/83	JA: ND			
8347327	783	3310580982		103		KEITH BLIKRE #1	LINDAHL-MADISON	50.0	AMINOIL USA INC
-MONSANTO COMPANY				RECEIVED:	08/01/83	JA: ND			
8347381	787	3301300949		103		ABEL-USA #2	FLAXTON	38.0	CITIES SERVICE CO
8347382	788	3301300948		103		DELORES-USA #2	FLAXTON	22.0	CITIES SERVICE CO
8347378	784	3301300936		103		GUDRUN #1	FLAXTON	10.0	CITIES SERVICE CO
8347379	785	3301300947		103		JACOBSEN #2	FLAXTON	60.0	CITIES SERVICE CO
8347380	786	3301300932		103		JENSEN #3	FLAXTON	8.0	CITIES SERVICE CO
-TEXACO INC				RECEIVED:	08/01/83	JA: ND			
8347385	791	3305301585		102-3		R L OLSON #11	BLUE BUTTES	46.4	MONTANA-DAKOTA UT
8347384	790	3310501041		102-3		SLETTE-STANGELAND (NCT-1) #2	WILLOW CREEK	388.7	MONTANA-DAKOTA UT
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	08/01/83	JA: ND			
8347383	789	3305300000		102-3		WILSON 1-20	KEENE	0.0	AMINOIL USA INC
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-BEREA OIL AND GAS CORPORATION				RECEIVED:	08/01/83	JA: WV			
8347398		4700121215		108		C BOOTH #1	BARKER	21.1	CONSOLIDATED GAS
8347399		4700121522		108		EVANS #3	BARKER	24.7	CONSOLIDATED GAS
-BRAXTON OIL AND GAS CORP				RECEIVED:	08/01/83	JA: WV			
8347400		4708300728		107-DV		MALM #1	ELLAMORE	60.0	COLUMBIA GAS TRAN
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	08/01/83	JA: WV			
8347397		4703903700		102-4		AMHERST COOL CO 820545	INDIAN CREEK	254.7	COLUMBIA GAS TRAN
8347392		4703903621		103		DAVID WARD ESTATE 820511	WEST VIRGINIA FIELD A	69.4	COLUMBIA GAS TRAN
8347393		4705900980		107-DV		MINGO OIL & GAS CO 820726	WEST VA FIELD AREA B	48.5	COLUMBIA GAS TRAN
-GERALD D JONES				RECEIVED:	08/01/83	JA: WV			
8347401		4701303435		107-DV		CECIL NORMAN #1	SAMS RUN	108.0	
-PEAKE OPERATING CO				RECEIVED:	07/28/83	JA: WV			
8347331		4703903895		107-DV		JOHNSON #1-A	JEFFERSON DISTRICT	5.0	
8347339		4704302569		107-DV		KING #1-A	(WASHINGTON DISTRICT)	5.0	
8347335		4703903905		107-DV		MARTIN #1-A	N A (JEFFERSON DISTRI	5.0	
8347337		4703903906		107-DV		MARTIN #2-A	(JEFFERSON DISTRICT)	5.0	
8347332		4703903864		107-DV		MORRIS #1-A	(WASHINGTON DISTRICT)	5.0	
8347338		4703903887		107-DV		PAULEY #1-A	(WASHINGTON DISTRICT)	5.0	
8347330		4703903859		107-DV		ROGERS #1-A	(JEFFERSON DISTRICT)	0.5	
8347340		4703903893		107-DV		ROGERS #3-A	(JEFFERSON DISTRICT)	5.0	
8347333		4703903894		107-DV		STEELE #2-A	(JEFFERSON DISTRICT)	5.0	
8347334		4703903897		107-DV		WISMAN #1-A	(WASHINGTON DISTRICT)	5.0	
8347336		4703903881		107-DV		WOOD #1-A	(WASHINGTON DISTRICT)	5.0	
8347341		4703903882		107-DV		YODER #1-A	(WASHINGTON DISTRICT)	5.0	
-RIMROCK PRODUCTION CORP				RECEIVED:	08/01/83	JA: WV			
8347395		4708505685		107-DV		COX #1	UNION	343.1	CARNEGIE NATURAL
8347396		4708505680		107-DV		CRANE "A" #1	WOFFEN RUN	92.9	COLUMBIA GAS TRAN
-WILLIAM B MEETER III				RECEIVED:	08/01/83	JA: WV			
8347394		4701303324		108		JOHN R KNOTTS #3	WASHINGTON	0.0	CONSOLIDATED GAS
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO									
**********									
-ARCO OIL AND GAS COMPANY				RECEIVED:	07/29/83	JA: CO 1			
8347349	CD-0123-83	0506706487		107-TF		SOUTHERN UTE 13-5 32-8 (TF)	IGNACIO BLANCO	42.0	WESTERN SLOPE GAS
-BEARTOOTH OIL & GAS CO				RECEIVED:	08/01/83	JA: CO 1			
8347370	CD 0132-83	0504506401		102-2		FEDERAL #5-15	GARMESA	180.0	NORTHWEST PIPELIN
-BRENEX OIL CORP				RECEIVED:	08/01/83	JA: CO 1			
8347372	CD-0133-83	0508106352		103		FEDERAL #1	WINTER VALLEY	255.5	MOUNTAIN FUEL RES
8347374	CD 0134-83	0508106511		103		FEDERAL #18-44	WINTER VALLEY	255.5	MOUNTAIN FUEL RES
-CHANDLER & ASSOCIATES INC				RECEIVED:	07/29/83	JA: CO 1			
8347348	CD-0094-83	0510308958		103		FORK UNIT 4-12-1-2D	DOUGLAS CREEK NORTH	32.0	NORTHWEST PIPELIN
-NATOMAS NORTH AMERICA INC				RECEIVED:	08/01/83	JA: CO 1			
8347373	CD-0127-83	0506706243		107-RI		PINE RIVER UNIT #1-30	IGNACIO-BLANCO	230.0	EL PASO NATURAL G
-TENNECO OIL COMPANY				RECEIVED:	07/29/83	JA: CO 1			
8347346	CD-0125-83	0504506423		103		DOUGLAS PASS UNIT USA 84-10	DOUGLAS PASS	30.0	NORTHWEST PIPELIN
-TERRA RESOURCES INC				RECEIVED:	07/29/83	JA: CO 1			
8347347	CD-0131-83	0507708229		108		BAR X UNIT #9	BAR X	0.0	NORTHWEST PIPELIN
-TWIN ARROW INC				RECEIVED:	08/01/83	JA: CO 1			
8347371	CD-0126-83	0510307833		108		EAST DOUGLAS 4-22	CATHEDRAL	15.2	NORTHWEST PIPELIN
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, LOS ANGELES,CA									
**********									
-UNION OIL COMPANY OF CALIF				RECEIVED:	08/01/83	JA: CA 2			
8347391	OCS-P 14-83	0451120541		102-5		SANTA CLARA UNIT S-15	CALIFORNIA OFFSHORE	0.0	PACIFIC LIGHTING
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM									
**********									
-AMOCO PRODUCTION CO				RECEIVED:	08/01/83	JA: NM 4			
8347403	NM 1431-82	3001523388		103		GREENWOOD PRE-GRAYBURG D COM #1	UNDESIGNATED ATOKA	718.0	GAS CO OF NEW MEX
-BLACKWOOD & NICHOLS CO				RECEIVED:	08/01/83	JA: NM 4			
8347499	NM 0184-83PB	3004510589		108-PB		NORTHEAST BLANCO UNIT #59	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
-COASTAL OIL & GAS CORP				RECEIVED:	08/01/83	JA: NM 4			
8347410	NM-0349-83	3002528074		103		FEDERAL 6 #2	BAUM	0.0	WARREN PETROLEUM
-CONSOLIDATED OIL & GAS INC				RECEIVED:	08/01/83	JA: NM 4			
8347500	NM 0282-83PB	3004510866		108-PB		OWEN #1	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
-DUGAN PRODUCTION CORP				RECEIVED:	08/01/83	JA: NM 4			
8347405	NM 1894-82	3004525135		103		REDFERN #1-R	FULCHER KUTZ P C	30.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	08/01/83	JA: NM 4			
8347424	NM-0508-83PB	3004521162		108-PB		ATLANTIC C #7	BLANCO	0.0	EL PASO NATURAL G
8347423	NM 0517-83PB	3004512093		108-PB		ATLANTIC C #8	BLANCO	0.0	EL PASO NATURAL G
8347483	NM 0518-83PB	3004520898		108-PB		ATLANTIC A #12	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347463	NM 0450-83PB	3004507049		108-PB		BLANCO #12	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8347486	NM 0522-83PB	3004500000		108-PB		BLANCO #15	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8347474	NM 0532-83PB	3004511712		108-PB		BOLACK B #5	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347451	NM-0474-83PB	3004520274		108-PB		BOLACK B #6	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347457	NM 0472-83PB	3003920074		108-PB		CANYON LARGO UNIT #141	OTERO CHACRA	0.0	EL PASO NATURAL G
8347446	NM-0477-83PB	3003920789		108-PB		CANYON LARGO UNIT #227	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347452	NM-0475-83PB	3003920783		108-PB		CANYON LARGO UNIT #230	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347480	NM 0527-83PB	3003920953		108-PB		CANYON LARGO UNIT #269	BALLARD PICTURED CLIF	0.0	EL PASO NATURAL G
8347439	NM-0495-83PB	3003906046		108-PB		CANYON LARGO UNIT #35	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347432	NM-0507-83PB	3004521114		108-PB		CASE #17	BLANCO	0.0	EL PASO NATURAL G
8347485	NM 0521-83PB	3004521515		108-PB		DAY #8	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347491	NM 0533-83PB	3004520906		108-PB		DAY A #15	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347489	NM 0513-83PB	3004520890		108-PB		FIELDS #8	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347438	NM-0494-83PB	3004506451		108-PB		FLORANCE D-5	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347461	NM 0455-83PB	3004511768		108-PB		FLORENCE #5	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347468	NM 0449-83PB	3004521983		108-PB		GRAMBLING C #11J	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347482	NM 0519-83PB	3004521563		108-PB		HANCOCK A #10	HARIS MESA CHACRA	0.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8347440	NM-0497-83PB	3004506954		108-PB		HANCOCK A #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347433	NM-0506-83PB	3004521150		108-PB		HARDIE #12	BLANCO	0.0	EL PASO NATURAL G
8347454	NM-0469-83PB	3004511795		108-PB		HEATON #28	AZTEC	0.0	EL PASO NATURAL G
8347466	NM 0447-83PB	3004520988		108-PB		HEATON #28	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347450	NM-0473-83PB	3004520336		108-PB		HOWELL #8	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347449	NM-0482-83PB	3004520346		108-PB		HOWELL A #4	BASIN	0.0	EL PASO NATURAL G
8347465	NM 0452-83PB	3004521453		108-PB		HUBBELL #14	BLOOMFIELD CHACRA	0.0	EL PASO NATURAL G
8347447	NM-0478-83PB	3004520273		108-PB		HUERFANO UNIT #127 R	BASIN	0.0	EL PASO NATURAL G
8347473	NM 0367-83PB	3004520273		108-PB		HUERFANO UNIT #127R	BASIN DAKOTA	0.0	EL PASO NATURAL G
8347472	NM 0366-83PB	3004511944		108-PB		HUERFANO UNIT #159	BASIN DAKOTA	0.0	EL PASO NATURAL G
8347469	NM 0368-83PB	3004520419		108-PB		HUERFANO UNIT #190	BASIN DAKOTA	0.0	EL PASO NATURAL G
8347441	NM-0486-83PB	3004520818		108-PB		HUERFANO UNIT #217	BASIN	0.0	EL PASO NATURAL G
8347470	NM 0395-83PB	3004521809		108-PB		HUERFANO UNIT #265	ANGELS PEAK GALLUP	0.0	EL PASO NATURAL G
8347471	NM 0399-83PB	3004520390		108-PB		HUERFANO UNIT #54	BASIN DAKOTA	0.0	EL PASO NATURAL G
8347475	NM 0529-83PB	3004511680		108-PB		HUGHES #22	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347426	NM-0510-83PB	3004521049		108-PB		KING #2	BLANCO	0.0	EL PASO NATURAL G
8347437	NM-0493-83PB	3003920304		108-PB		KLEIN #15	OTERO	0.0	EL PASO NATURAL G
8347467	NM 0448-83PB	3004521562		108-PB		LACKEY #9	HARRIS MESA CHACRA	0.0	EL PASO NATURAL G
8347490	NM 0514-83PB	3003920919		108-PB		LINDRITH UNIT #77	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347425	NM 0509-83PB	3004521084		108-PB		MUDGE #42	BLANCO	0.0	EL PASO NATURAL G
8347462	NM 0456-83PB	3004509054		108-PB		MURPHY E #3	AZTEC PICTURED CLIFFS	0.0	EL PASO NATURAL G
8347453	NM-0476-83PB	3003906821		108-PB		RINCON UNIT #124	BLANCO	0.0	EL PASO NATURAL G
8347464	NM 0451-83PB	3003921716		108-PB		RINCON UNIT #212	OTERO CHACRA	0.0	EL PASO NATURAL G
8347435	NM-0501-83PB	3003921399		108-PB		RINCON UNIT #227	BASIN	0.0	EL PASO NATURAL G
8347443	NM 0489-83PB	3003906864		108-PB		RINCON UNIT #62	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347444	NM-0490-83PB	3003906889		108-PB		RINCON UNIT #71	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347429	NM-0504-83PB	3003960094		108-PB		RINCON UNIT #97	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8347488	NM 0512-83PB	3004521090		108-PB		ROELOFS A #6	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347455	NM-0470-83PB	3003907418		108-PB		SAN JUAN 28-5 UNIT #25	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8347430	NM-0499-83PB	3003907368		108-PB		SAN JUAN 28-5 UNIT #37	BLANCO	0.0	EL PASO NATURAL G
8347458	NM 0457-83PB	3003920859		108-PB		SAN JUAN 28-6 UNIT #200	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347459	NM0453-83PB	3003920989		108-PB		SAN JUAN 28-6 UNIT #201	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347442	NM-0488-83PB	3003907118		108-PB		SAN JUAN 28-6 UNIT #53	BLANCO	0.0	EL PASO NATURAL G
8347481	NM 0525-83PB	3003921732		108-PB		SAN JUAN 28-7 UNIT #118	BASIN DAKOTA	0.0	EL PASO NATURAL G
8347445	NM-0491-83PB	3003906906		108-PB		SAN JUAN 28-7 UNIT #123	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347456	NM 0471-83PB	3003907317		108-PB		SAN JUAN 28-7 UNIT #19	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8347460	NM 0454-83PB	3003920860		108-PB		SAN JUAN 28-7 UNIT #197	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347448	NM-0480-83PB	3003921082		108-PB		SAN JUAN 28-7 UNIT #240	LARGO	0.0	EL PASO NATURAL G
8347428	NM-0502-83PB	3003907411		108-PB		SAN JUAN 28-7 UNIT #30	BLANCO	0.0	EL PASO NATURAL G
8347487	NM 0523-83PB	3003920509		108-PB		SAN JUAN 29-7 UNIT #103	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347422	NM 0516-83PB	3004507025		108-PB		SCHWERDTFEGER A #8	SOUTH BLANCO	0.0	EL PASO NATURAL G
8347476	NM 0538-83PB	3004520854		108-PB		SELLERS #7	AZTEC PICTURED CLIFFS	0.0	EL PASO NATURAL G
8347431	NM-0498-83PB	3004509125		108-PB		STEWART #8	BASIN	0.0	EL PASO NATURAL G
8347436	NM-0492-83PB	3004507097		108-PB		STOREY C #2	AZTEC	0.0	EL PASO NATURAL G
8347477	NM 0531-83PB	3004521172		108-PB		SUNRAY #5	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347434	NM-0500-83PB	3004509295		108-PB		SUNRAY D #1	BASIN	0.0	EL PASO NATURAL G
8347484	NM 0520-83PB	3004521134		108-PB		SUNRAY H #4	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347478	NM 0525-83PB	3004521136		108-PB		SUNRAY H #5	BLANCO PICTURED CLIFF	0.0	EL PASO NATURAL G
8347427	NM-0511-83PB	3004521050		108-PB		TURNER #6	BLANCO	0.0	EL PASO NATURAL G
8347479	NM 0526-83PB	3003920371		108-PB		VAUGHN #13	BASIN DAKOTA	0.0	EL PASO NATURAL G
-GETTY OIL COMPANY				RECEIVED:	08/01/83	JA: NM 4			
8347497	NM 0461-83PB	3004506772		108-PB		J Q MARSHALL #1	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347421	NM 0561-83	3003905902		108		JICARILLA "C" #10	SO BLANCO PICTURED CL	20.0	EL PASO NATURAL G
8347494	NM 0458-83PB	3003905725		108-PB		JICARILLA B #5	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347493	NM 0459-83PB	3003905826		108-PB		JICARILLA C #24	OTERO CHACRA	0.0	EL PASO NATURAL G
8347492	NM 0460-83PB	3003906480		108-PB		JOHN CHARLES #2	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347420	NM 0509-83	3004510897		108		MEXICO FED "MM" #1	BASIN DAKOTA & BLANCO	20.0	EL PASO NATURAL G
8347496	NM 0463-83PB	3004513247		108-PB		NEAH VICTORIA #1	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347495	NM 0464-83PB	3004506876		108-PB		NEAH VICTORIA #2	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8347498	NM 0402-83PB	3004523627		108-PB		NELLIE PLATERO #6	HARRIS MESA CHACRA	0.0	EL PASO NATURAL G
-GULF OIL CORPORATION				RECEIVED:	08/01/83	JA: NM 4			
8347411	NM-0551-83	3002526177		103		C E LAMUNYON #49	IMPERIAL TUBB DRINKAR	0.0	EL PASO NATURAL G
-HIXON DEVELOPMENT COMPANY				RECEIVED:	08/01/83	JA: NM 4			
8347409	NM-0093-83	3004500000		108		CARSON UNIT #113-17	BASIN DAKOTA	19.5	EL PASO NATURAL G
-LADD PETROLEUM CORPORATION				RECEIVED:	08/01/83	JA: NM 4			
8347408	NM 1969-82	3004525421		103		U S ARGO #3	FULCHER-KUTZ - (PICTU	295.6	
-LYNX PETROLEUM CONSULTANTS INC				RECEIVED:	08/01/83	JA: NM 4			
8347416	NM 0399-83	3002527929		103		LYNX FEDERAL #3	MALJAMAR GRAYBURG - S	0.0	PHILLIPS PETROLEU
-MESA PETROLEUM CO				RECEIVED:	08/01/83	JA: NM 4			
8347402	NM-0932-82	3001522290		108		BINDEL FEDERAL COM #1	CARLSBAD SO MORROW	7.0	EL PASO NATURAL G
-NATIONAL COOP REFINERY ASSOC				RECEIVED:	08/01/83	JA: NM 4			
8347501	NM 0503-83PB	3003900000		108-PB		CANDADO #8	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
-RAY WESTALL				RECEIVED:	08/01/83	JA: NM 4			
8347418	NM 0403-83	3001523927		103		ARCO FEDERAL #1	GRAYBURG JACKSON	0.0	PHILLIPS PETROLEU
8347419	NM 0404-83	3001523928		103		ARCO FEDERAL #2	GRAYBURG JACKSON	0.0	PHILLIPS PETROLEU
8347417	NM 0402-83	3001523627		103		HEWITT FEDERAL #1	LOCO HILLS Q-G-SA	0.0	PHILLIPS PETROLEU
-SUPRON ENERGY CORPORATION				RECEIVED:	08/01/83	JA: NM 4			
8347406	NM 1917-82	3004525404		103		NAVAJO "D" #1-E	BASIN DAKOTA	402.0	
8347407	NM 1918-82	3004525044		103		NAVAJO INDIAN 6-E	BASIN DAKOTA	600.0	EL PASO NATURAL G
8347404	NM 1756-83	3004524448		103		NEWSOM "A" #24	BALLARD PICTURED CLIF	123.0	GAS CO OF NEW MEX
8347415	NM 0397-83	3004525503		103		ZACHRY 29	ARMENTA GALLUP	41.0	SOUTHERN UNION GA
8347413	NM 0395-83	3004525463		103		ZACHRY 37	ARMENTA GALLUP EXT	69.0	EL PASO NATURAL G
8347414	NM 0396-83	3004525469		103		ZACHRY 40	ARMENTA GALLUP EXT	35.0	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION				RECEIVED:	08/01/83	JA: NM 4			
8347412	NM0574-83107	3000561915		102-2	107-TF	BINNON "TT" FED #1	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, TULSA,OK									
**********									
-GULF OIL CORPORATION				RECEIVED:	07/29/83	JA: OK 6			
8347345	OKT-1-83	3506321812		103		M HARJO #5-4	ALABAMA (HUNTON)	5.0	
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	07/29/83	JA: OK 6			
8347343	OK-A-0337-83	3501521511		103		E BINGER UNIT #15-2	EAST BINGER	0.0	OKLAHOMA NATURAL
8347344	OK-A-0532-83	3501521539		103		E BINGER UNIT #54-G2	EAST BINGER	0.0	OKLAHOMA NATURAL
**********									
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK									
**********									
-DALE ECHOLS				RECEIVED:	08/01/83	JA: OK 8			
8347364		3511300000		108		RUSK #4-1	W BIRCH CREEK	14.5	PHILLIPS PETROLEU
-DEREK A J CLARK				RECEIVED:	08/01/83	JA: OK 8			
8347365		3511300000		103		S WHITETAIL #2-7 SW/4 SEC 7-26N-10E	SOUTH WHITETAIL	18.2	PHILLIPS PETROLEU
-MIDSTATES OIL CO				RECEIVED:	08/01/83	JA: OK 8			
8347368		3511300000		103		OXLEY #1-18	MISSISSIPPI	18.0	PHILLIPS PETROLEU
8347367		3511300000		103		OXLEY #2-18	MISSISSIPPI	18.0	PHILLIPS PETROLEU
8347366		3511300000		103		OXLEY WEST #1-A	SKINNER	9.0	PHILLIPS PETROLEU
-PERKINS PRODUCTION CO				RECEIVED:	08/01/83	JA: OK 8			
8347369		3511300000		103		MULLENDORE #12	DOMES - POND CREEK	15.0	AJAX OIL & GAS CO

[FR Doc. 83-23001 Filed 8-19-83; 8:45 am]

BILLING CODE 6717-01-C

Reader Aids

Federal Register

Vol. 48, No. 163

Monday, August 22, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

34723-34928.....1
34929-35068.....2
35069-35344.....3
35345-35586.....4
35587-35872.....5
35873-36090.....6
36091-36240.....9
36241-36438.....10
36439-36560.....11
36561-36796.....12
36797-37000.....15
37001-37200.....16
37201-37358.....17
37359-37602.....18
37603-37920.....19
37921-38200.....22

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing August 18, 1983

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 83-8 of July 19, 1983.....35587
No. 83-9 of August 5, 1983.....36561

Executive Orders:

12217 (Revoked by EO 12437).....36801
12435.....34723
12436.....34931
12437.....36801

Proclamations:

5078.....34929
5079.....35873
5080.....36091
5081.....36241
5082.....36797
5083.....36799

5 CFR

550.....36803
551.....36803
950.....34910

Proposed Rules:

1255.....35652

7 CFR

2.....37359
28.....37001
226.....35589
707.....35598
720.....35599
724.....37603
726.....36563
796.....35599
908.....35345, 36439, 37360
910.....35600, 36563, 37607
915.....35345
916.....35345
917.....35345
921.....35345
922.....35345
924.....35345
926.....35345
930.....35345
945.....35345
946.....35345
947.....35345
948.....35345
953.....35345
958.....35345
967.....35345
982.....35345
985.....35345
989.....35347
993.....35345
1124.....36439
1427.....35348
1430.....34725, 34933
3015.....35875

Proposed Rules:

68.....35411
75.....35411
101.....37417
201.....35417
240.....35108
278.....35868
279.....35868
404.....35418
408.....35423
413.....35427
416.....37420
417.....35431
421.....35435
423.....35439
425.....35443
432.....35447
437.....35112
442.....35451
983.....36272
989.....35454
1004.....36113
1030.....36464
1036.....38001
1076.....36467
1079.....37424, 38002
1106.....37657
1139.....35652
1290.....35116

8 CFR

100.....37201
103.....36441, 36564
212.....35349, 36564, 37608
231.....36093, 37003
235.....35349, 37608

9 CFR

71.....37921
74.....37921
78.....34943
92.....37202
97.....37361

Proposed Rules:
3 35654
317 35654
319 35654
325 35884
381 ..... 35654, 35884

10 CFR
25 35069
40 35350
71 35600
795 36432
1016 36432
Proposed Rules:
Ch. I 34966
Ch. II 37226
430 34858
625 35119
710 35342
761 36792
1017 36825

11 CFR
102 37921

12 CFR
207 35070
220 34944
221 ..... 35074, 37361
225 37003
303 ..... 34945, 36565
329 ..... 35627, 35629
Proposed Rules:
226 35659
705 37042

13 CFR
Proposed Rules:
115 37658
120 37044
121 34966
122 36825

14 CFR
39 ..... 34731, 35355–35364, 36806, 37361–37364, 37922–37924
71 ..... 35364–35366, 36442, 37365, 37925
73 36806
75 35366
91 36442
95 36445
97 ..... 35876, 37926
212 36445
223 37928
252 36093
261 35060
263 35081
289 ..... 35081, 37608
398 36094
1204 37608
Proposed Rules:
Ch. I 36826
21 38002
25 38004
39 ..... 36468, 37425–37427, 38005
71 ..... 35456–35458, 35887, 38006
73 ..... 36827, 37428, 37429
152 36828
159 37430
241 ..... 36598, 36601
252 36273
298 36601
377 35459
385 36601
399 35119

15 CFR
Proposed Rules:
921 35120
971 35888

16 CFR
13 ..... 35367, 37202, 37203
305 35385
455 36096
1013 36566
Proposed Rules:
13 ..... 34764, 35132–35135, 35888
305 37663
451 36273
460 35661

17 CFR
1 35248
3 ..... 34732, 35248, 35305, 37203
4 35248
10 35248
15 35248
17 35248
18 35248
21 35248
33 35248
140 34945
145 35248
147 35248
155 35248
166 35248
170 35248
210 ..... 36566, 37609
229 37609
230 37928
231 37609
239 ..... 36566, 37928
240 35082
241 37609
270 ..... 36097, 36243, 37928
274 37928
Proposed Rules:
145 34971
146 34971
147 34971
240 ..... 37430, 37664
249 36115
270 35459

18 CFR
2 ..... 35631, 35633
154 35633
157 ..... 34872, 34875, 35635
270 35633
271 35633–35636
284 ..... 34875, 35635
300 37006
410 ..... 34946, 36469
Proposed Rules:
271 35663–35666

19 CFR
12 34734
127 34734
177 35878
210 35386
Proposed Rules:
101 35666
171 37227
175 36625

20 CFR
404 37015
Proposed Rules:
299 35460
404 ..... 35135, 36831
410 35135
416 ..... 35135, 36831, 37228
422 ..... 35135, 36831
652 ..... 34866, 34974
653 34866
655 35667

21 CFR
5 36571
74 ..... 34946, 37020
109 37020
173 37614
175 37615
176 37617
177 ..... 36099, 37618
178 37615
193 ..... 36246, 36448, 37203
201 37619
211 37624
436 34947
452 36571
522 ..... 34947, 36100, 36571
555 37623
558 ..... 34948, 34949, 35637, 36100, 36101, 37620–37622
561 ..... 36448, 37203
610 37022
700 37624
800 37624
870 36101
1316 35087
Proposed Rules:
Ch. I 37665
131 37666
133 ..... 36132, 36625, 37666
146 37668
184 34974
291 35668
353 36133

23 CFR
Ch. I 35388
Proposed Rules:
652 36470
771 33894

24 CFR
202a 36247
203 ..... 34949, 35088, 35638, 36247
205 35389
207 35389
209 36247
211 36247
213 ..... 35389, 35638, 36247
220 ..... 35393, 36247
221 ..... 35389, 36247
222 36247
226 36247
228 36247
232 35389
234 ..... 35638, 36247
235 ..... 34949, 36247
237 36247
244 35389
300 ..... 36572, 36573
500 36574
868 37023
886 36101
Proposed Rules:
115 36133
200 ..... 35668–35671, 35890
203 35140
234 35140
235 35140
241 35891
3280 37136

25 CFR
Proposed Rules:
11 37046

26 CFR
1 36448
31 ..... 35089, 36807
35 ..... 35090, 36448, 36807
51 35092
150 35092
301 36449
Proposed Rules:
1 ..... 36137, 36474
5c 36137
20 35143
31 36474

27 CFR
9 ..... 35395, 37365–37374
178 35398
Proposed Rules:
5 35460
9 ..... 35462, 37670

28 CFR
0 35087
9 35087
60 37376
Proposed Rules:
0 35892
16 35892

29 CFR
500 ..... 36576, 36736
1910 36576
1952 ..... 34950, 34951, 37024
1956 37025
2610 37027
2619 36816
2622 37027
Proposed Rules:
1550 37047
1697 34766
1910 37672
1926 35774
2615 37230

30 CFR
Ch. II 35639
221 36582
226 36582
231 36588
251 37967
641 37377
642 37377
800 36418
806 36418
872 35399
880 37377
881 37377
913 37625
914 37626
926 37382

Proposed Rules:
55 36789
56 36789
57 36789
913 36625
915 35903
935 ..... 35146, 36274, 36627
938 37672

31 CFR

Proposed Rules:
1 35904

32 CFR

70 35644
219 35400
253 35644
263 34952
373 36247
706 ..... 37029, 37030
819a 35878
842 37631
865 37364

Proposed Rules:
65 34974

33 CFR

1 35402
8 36449
25 36450
53 36449
100 ..... 36450, 36451, 37396, 37397
110 36452
117 ..... 35409, 36452
154 34740
160 35402
161 35402
165 ..... 35402, 36453
167 36453

Proposed Rules:
100 ..... 36474, 37433
110 34767
115 35464
117 ..... 36475, 36477
161 37433
165 37438

34 CFR

200 34953
205 35879
263 35330

35 CFR

Proposed Rules:
111 35905

36 CFR

223 34740

Proposed Rules:
13 37673
228 35580
251 ..... 35465, 35580
261 35465

37 CFR

202 37204

Proposed Rules:
1 ..... 34836, 36478
2 36478
202 37232

38 CFR

3 37031
17 37398
21 ..... 35879, 36577, 37968
36 35879
40 36103

Proposed Rules:
17 38007
21 ..... 34975, 35146

39 CFR

10 35409
111 35645

Proposed Rules:
111 37439
3001 35914

40 CFR

35 37814
52 ..... 36250, 36818, 36819, 37401-37403
60 ..... 36579, 37578, 37598
61 36579
81 ..... 37404, 37653
162 35095
180 ..... 35095, 36251, 37210-37214
264 36582
270 36582
271 ..... 34742, 34954, 35096, 35097, 35647, 36252, 37215
425 35649
468 36942
717 38178

Proposed Rules:
Ch. II 34768
50 38009
52 ..... 34976, 35312-35328, 35672, 35918, 36139, 37232
60 ..... 35338, 37338
61 38009
62 34978
81 ..... 35919, 35920, 36275
145 37673
180 36486
228 ..... 35147, 35673
271 ..... 36277, 36628, 38010
302 34979
414 35674
416 35674
1502 36486
1508 36486

41 CFR

Ch. 1 37031
Ch. 101 35098
5-1 37997
5-53 37405
29-70 37786
101-41 35649

Proposed Rules:
3-1 37233
3-3 37233

42 CFR

405 37408

Proposed Rules:
71 36143
100 36390
122 36402
123 36402
125 36390
400 38146
405 ..... 34979, 38146
408 38146
409 38146
418 38146
420 38146
421 ..... 34979, 38146
431 36151
441 38011
460 36970
462 36970
489 38146

43 CFR

2 37411
1820 36103
3000 37654
3100 37656
3410 37654
3420 37654
3430 37654
3450 37654

Public Land Orders:
3160 36582
3180 36582
3570 36588
6380 (corrected by PLO 6451) 35099
6388 (corrected by PLO 6450) 35098
6448 34743
6449 34743
6450 35098
6451 35099
8360 36382

Proposed Rules:
36 37673

44 CFR

64 ..... 34744, 34957, 36590, 36592
67 36104
71 37036

Proposed Rules:
61 35468
62 35468
67 ..... 36159-36167, 36629, 38018, 38019

45 CFR

1 35099
10 35099
67 35099
99 35099
1607 36820

Proposed Rules:
5b 37440
302 35468
304 35468
306 35468
1606 36845
1625 36845

46 CFR

31 36457
32 36457
35 36457
221 35881
503 36253
536 ..... 35099, 36254

Proposed Rules:
10 35920
35 35920
50 37441
52 37441
53 37441
54 37441
63 37441
157 35920
162 37441
175 35920
185 35920
186 35920
187 35920
295 37449
298 37453
540 35675

47 CFR

0 37413
1 ..... 36104, 36459
2 ..... 34746, 37216
15 ..... 34748, 37217
18 37217
21 ..... 34746, 37216
22 37997
73 ..... 34753-34757, 34959, 36106-36112, 36254, 36459, 37216, 37220-37224, 37414-37416
74 ..... 34746, 37216
83 34961
90 ..... 34961, 36104
95 ..... 35234, 36104
97 ..... 34746, 37224

Proposed Rules:
Ch. I 36167, 37235, 37464
2 37475
18 37235
68 34985
73 ..... 34772-34779, 35964, 36168-36173, 36278, 37239-37269, 37475-37492, 38020, 38053
76 34986
90 ..... 34782, 34987, 35149

48 CFR

Proposed Rules:
Ch. I 35675

49 CFR

1 37998
192 37999
213 35882
1170 35409
1175 36594
1300 36822
1307 36822

Proposed Rules:
Ch. X 38059
171 ..... 35471, 35965
172 ..... 35471, 35965, 35970
173 ..... 35471, 35965, 35970
175 35471
179 35970
210 36487
218 36492
571 ..... 34783, 34784, 36493, 36849
572 37493
622 34894
1105 36284
1152 36284
1160 36285
1165 36290
1180 36284

50 CFR

10 37040
17 ..... 34757, 34961, 36256, 36594
20 35100

32 36112
285 ..... 35107, 36597, 36823
611 ..... 34762, 34962, 35107
649 36266
650 34762
651 34762
652 34762
654 34762
655 34762
661 36823
662 34963
663 ..... 34762, 34763
671 34762
672 ..... 34762, 35107, 37040
674 ..... 34762, 34965, 37224
675 ..... 34762, 35107

Proposed Rules:

17 ..... 35475, 35973
20 ..... 35152, 35153, 36853
23 37494
32 34987
36 37673
424 36062
681 35475

Just Released

Code of Federal Regulations

Revised as of January 1, 1983

Quantity	Volume	Price	Amount
_____	Title 15—Commerce and Foreign Trade (Parts 300 to 399) (Stock No. 022-003-95136-9)	$7.00	$_____
_____	Title 16—Commercial Practices (Parts 1000 to End) (Stock No. 022-003-95140-7)	$7.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances for 1982-83 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me **the Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		