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Wednesday
November 2, 1983

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Nuclear Regulatory Commission

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Authority Delegations (Government Agencies)
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

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Commodity Futures Trading Commission

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Loan Programs—Education
Veterans Administration

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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

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Alternative Packaging for Burley Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Clarification.

SUMMARY: The purpose of this notice is to clarify and correct a statement in the **"SUPPLEMENTARY INFORMATION"** of a final rule concerning official grading published by the Department in the Federal Register on September 7, 1983. The statement was in reference to the close monitoring by the Department of untied, sheeted sales to insure strict compliance with a 250-pound maximum weight per sheet. Such weight monitoring is currently a State-regulated function.

EFFECTIVE DATE: November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, Room 502 Annex Building, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–2567.

SUPPLEMENTARY INFORMATION: A final rule was published at 48 FR 40365, September 7, 1983, amending the Department's regulations to provide for official grading of untied, sheeted sales of burley tobacco. The authority for promulgating these regulations is contained in the Tobacco Inspection Act of 1935 [49 Stat. 731; 7 U.S.C., 511 *et seq.*].

In the **"SUPPLEMENTARY INFORMATION"** of the rulemaking document, the Department, in addressing a public comment stated: "A comment by a buying concern which consistently had been opposed to untied, sheeted sales stated that if untied, sheeted sales were allowed that the action be conditioned by (1) Compliance with the regulations regarding leaf orientation; (2) a 250-pound maximum weight per sheet; and (3) one sheet only should constitute a 'lot.' These conditions are well received. The Department, in an effort to provide improved services to the industry, shall closely monitor untied, sheeted sales across the burley belt to insure strict compliance with the aforestated conditions."

While items (1) and (3) are specifically addressed in the revised regulations in the final rule published at FR 40365, September 7, 1983, item (2) is not. Weight limitations are presently controlled at the State rather than the federal level. Therefore, the Department is giving notice that the part of the above statement regarding weight monitoring is hereby revised to indicate that such monitoring is the responsibility of the states and not the federal inspector.

Dated: October 27, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 83-29714 Filed 11-1-83; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 906

Oranges and Grapefruit Grown in Texas; Special Purpose Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule permits shipment of Texas oranges and grapefruit mixed with other kinds of fruit, such as apples and avocados, exempt from certain container and pack requirements under certain conditions. Such action is designed to expand the market for such oranges and grapefruit by authorizing another type of special purpose shipment.

DATES: Effective date: November 2, 1983.
Comments due: December 2, 1983.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under Secretary's Memorandum 1512–1 and Executive order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the Texas orange and grapefruit crops for the benefit of producers, and will not substantially affect costs for the directly regulated handlers. Any comments relating to economic impact on small entities should be filed within the 30 days provided.

This interim rule is issued under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Texas Valley Citrus Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

Shipment of oranges and grapefruit mixed with other types of fruit, such as apples and avocados, is not permitted under current regulations, as such shipments would not meet certain container and pack requirements. This rule would exempt such shipments from such container and pack requirements by permitting oranges and grapefruit mixed with other types of fruit to be shipped as special shipments under the provisions specified in § 906.42 subject to certain conditions. One such condition is that at least 50 percent, by count, of the contents of any container of mixed fruit be oranges and/or grapefruit. The purpose of this condition is to ensure that Texas oranges and grapefruit are prominently featured in mixed packs of fruit. Another condition is that such mixed fruit shipments be made in containers not larger than the

7/10 bushel carton, in that containers larger than such carton are considered unsuitable for this type of shipment. The other condition establishes minimum grade requirements for both grapefruit (U.S. No. 1), and oranges (a modified U.S. Combination grade). This condition recognizes that such mixed fruit packs are a special type of shipment intended for a distinct market which demands high quality fruit. Grapefruit and oranges in such shipments would also be subject to the current minimum size assessments, and inspection and certification requirements. This action is intended to expand the market for Texas oranges and grapefruit.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on this rule at an open meeting. Handlers have been apprised of this rule's provisions and the effective time. The 1983–84 Texas orange and grapefruit shipping season has already begun, and handlers need to make use of this rule's provisions as soon as possible. This rule relieves restrictions on the handling of oranges and grapefruit, and it provides 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need be received within 30 days, so that any necessary changes can be made promptly to enhance orderly marketing of Texas citrus. All comments received will be considered prior to finalization of this interim rule.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Oranges, Grapefruit, Texas.

PART 906—[AMENDED]

Therefore, § 906.120(c) of Subpart—Rules and Regulations (§§ 906.120–906.151) is amended by adding a new paragraph (c)(4) and by revising current paragraph (e) to read as follows:

§ 906.120 Fruit exempt from regulations.

* * * * *

(c) * * *

(4) Oranges and grapefruit may be handled exempt from container and pack regulations issued pursuant to § 906.40(d), under the following conditions:

(i) Such oranges and/or grapefruit are mixed with other types of fruit;

(ii) Such oranges and/or grapefruit constitute at least 50 percent, by count, of the contents of any container, and any such container is not larger than a 7/10 bushel carton; and

(iii) Such grapefruit grade at least U.S. No. 1, and such oranges grade at least U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot grading at least U.S. No. 1).

* * * * *

(e) *Terms.* The term "bushel" means a unit of measure equivalent to 2,150.42 cubic inches; the term "level full" means that the fruit is level with the top edge of the bottom section of the carton; the term "six-pack" means any container with a capacity of one-fourth of a bushel, the term "basket" means any container made of interwoven material; the term "closed" means closed in accordance with good commercial practices; and terms relating to grade mean the same as in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 51.620–51.653), or in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680–51.714).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 28, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agriculture Marketing Service.

[FR Doc. 83-29760 Filed 11-1-83; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1983-28]

Nonpartisan Communications by Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Final rule; Transmittal of Regulations to Congress.

SUMMARY: The Federal Election Commission regulations at 11 CFR 114.3 and 114.4 governing contributions and expenditures by corporations and labor organizations for nonpartisan communications have been revised and transmitted to Congress pursuant to 2 U.S.C. 438(d). The revisions were initiated in response to issues raised in several advisory opinions which the Commission has issued in this area.

The revisions clarify the classes of persons to whom nonpartisan communications may be made under each section and indicate the types of communications which are permissible. They also expand the types of publications which may be distributed to the general public by corporations and labor organizations to include nonpartisan voting records and voter guides. Further information on the revised regulations is contained in the supplementary information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 2 U.S.C. 438(d).

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) 824–9530.

SUPPLEMENTARY INFORMATION: The Commission has considered public comments received in response to its Advance Notice of Proposed Rulemaking (45 FR 56349; August 25, 1980) and Notice of Proposed Rulemaking (46 FR 44964; September 8, 1981). The proposed regulations were first transmitted to Congress on March 1, 1983, (48 FR 9236; March 4, 1983); but were withdrawn on April 21, 1983, to seek further public comment (48 FR 17566; April 22, 1983). Following the close of the comment period on the Commission's Second Notice of Proposed Rulemaking (48 FR 17567; April 22, 1983), the Commission held a second round of public hearings on August 9 and 10, 1983.

The Commission notes that many commentors raised issues that cannot be resolved in the context of this rulemaking. For instance, concern was expressed over perceived differences between the Commission's proposed rules and those of the Internal Revenue Service in this area. While efforts have been made to make the Commission's rules consistent with those of the IRS, any remaining differences result from the fact that the mandate and jurisdiction of each agency is different. See, 2 U.S.C. 438(f). Concern was also raised regarding the inclusion of corporations that are exempt from federal taxation under section 501 (c) (3) or (c) (4) of the Internal Revenue Code. However, the Act does not specifically exclude such nonprofit corporations from the broad prohibition against contributions and expenditures by corporations in connection with federal

elections. As that statutory prohibition is the basis for these regulations, the Commission may not exempt nonprofit corporations from the scope of the regulations in the absence of a clear legislative intent to do so.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The following regulations were transmitted to Congress on October 27, 1983.

Explanation and Justification of 11 CFR 114.3 and 114.4.

Section 114.3 Disbursements for Communications in Connection with a Federal Election to Restricted Class.

Section 114.3(a) General.

Paragraph (a)(1) sets forth the basic rule of 2 U.S.C. 441b(b)(2)(A), which allows corporations and labor organizations to communicate with their restricted class on any subject. A corporation's restricted class includes its stockholders, executive and administrative personnel and their families. The restricted class of labor organizations has been redefined in this paragraph to include the organizations' executive and administrative personnel and their families, as well as members and their families. This inclusion is consistent with the legislative intent "that unions, insofar as they are employers, stand in the same shoes as corporations." *See, generally*, H.R. Conf. Rep. No. 1057, 94th Cong., 2d Sess. 64 (1976).

This paragraph also distinguishes between the communications that may be made to the restricted class and those that may be made to the general public as permitted under 11 CFR 114.4. Finally, language has been added to paragraph (a)(1) to make it clear that national banks and corporations organized pursuant to a Congressional enactment may not make contributions or expenditures for partisan communications to the general public in connection with any election, including State and local elections.

Paragraph (a)(2) clarifies the application of § 114.3 to incorporated membership organizations, incorporated trade associations, incorporated cooperatives, and corporations without capital stock. The restricted class of these organizations has been redefined to include families of members. This addition is consistent with the provisions defining the restricted classes of corporations and unions under 2 U.S.C. 441b, both of which include families.

Section 114.3 (b) Reporting Partisan Communications.

This paragraph generally follows current § 114.3(b) while clarifying which disbursements for communications to the restricted class must be reported.

Section 114.3(c) Means of Making Partisan Communications.

This paragraph generally follows current § 114.3(c), but explains that the kinds of communications listed in this subsection are examples of those for which disbursements must be reported under paragraph (b).

Section 114.3(c)(1) Partisan Publications.

Paragraph (c)(1) generally follows current § 114.3(c)(1). However, section (c)(1)(ii) has been revised to state that a corporation or labor organization may use brief quotations from speeches or other materials prepared by a candidate in expressing its own views under this section.

Section 114.3(c)(2) Partisan Candidate and Party Appearances.

Paragraph (c)(2) expands current § 114.3(c)(2) by eliminating the requirements that a meeting at which a candidate or party representative appears to address members of the sponsor's restricted class be one that is "regularly scheduled" and "primarily held for other purposes." In addition, this paragraph now permits the presence of employees who are outside the restricted class, a limited number of invited guests and observers, and representatives of the news media at such meetings. At the Commission's public hearing on these regulations the presence of such persons was described as a necessary element of such meetings and, therefore, the Commission was urged to provide an exception for them under this section. The Commission notes, however, that this provision is limited to those employees necessary to administer the meeting. Similarly, the presence of invited guests and observers is limited to speakers, recipients of awards, and other persons specially invited to attend such a meeting and is not intended to permit a sponsor to invite large numbers of persons outside the solicitable class, such as rank and file employees of a corporation, whose presence would otherwise trigger the rules governing nonpartisan appearances under § 114.4.

Section 114.3(c)(3) Partisan Phone Banks.

Paragraph (c)(3) generally follows current § 114.3(c)(3).

Section 114.3(c)(4) Partisan Registration and Get-Out-The-Vote Drives.

Paragraph (c)(4) generally follows current § 114.3(c)(4).

Section 114.4 Expenditures for Communications in Connection with a Federal Election to the Restricted Class and the General Public.

Section 114.4(a) Nonpartisan Communications by a Corporation or Labor Organization to its Restricted Class.

Section 114.4(a)(1) General.

Paragraph (a)(1)(i) makes clear that corporations and labor organizations may make the nonpartisan communications permitted under this section just to their restricted class if they so choose. It also clarifies the distinction between this section and § 114.3, which describes communications that may only be made to the restricted class. As in § 114.3, this section adds "executive and administrative personnel" to the restricted class of labor organizations.

Paragraph (a)(1)(ii) was added to clarify the application of this section to incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock. These organizations are treated as corporations for the purpose of making the communications to the general public permitted under § 114.4 (b) and (c). As in § 114.3, the restricted class of these organizations has been expanded to include families of members.

Section 114.4(a)(2) Nonpartisan Candidate and Party Appearances on Corporate Premises or at a Meeting, Convention or Other Function.

This section generally follows current § 114.4(b)(1) but has been revised to include meetings, conventions or other functions sponsored by the corporation, regardless of whether they are held on corporate premises. Also, the category of Presidential and Vice Presidential candidates that may request to appear at such meetings is more specifically defined under paragraph (a)(2)(ii) than in the current regulations to reduce the burden on sponsoring organizations that must provide a forum under this rule.

It should be noted that the operation of this subsection involves appearances in connection with a federal election.

Such appearances can be distinguished from those in which an incumbent, who may also be a "candidate" under the Act, is requested to appear in his or her capacity as an officeholder at a public meeting sponsored by a corporation or labor organization. If the discussion at the meeting is limited to issues of concern to the sponsoring organization or its industry and avoids any reference to campaign activity, the sponsor may finance the meeting without triggering the "same opportunity to appear" requirements of this paragraph. *See* e.g., Advisory Opinion 1980–22.

Section 114.4(a)(3) Nonpartisan Candidate and Party Appearances on Labor Organization Premises or at a Meeting, Convention or Other Function.

This section generally follows current § 114.4(b)(2) and, like § 114.4(a)(2), has been expanded to include nonpartisan candidate and party appearances at meetings, conventions or other functions sponsored by the labor organization which are not held on its premises.

Section 114.4(b) Nonpartisan Communications by Corporations and Labor Organizations to the General Public.

Section 114.4(b)(1) General.

This paragraph clarifies that the communications described in § 114.4(b) may be made to the general public. It also permits the sponsor of a communication made under this section to identify itself or include its logo on materials prepared and distributed under this section, consistent with the Commission's decision in Advisory Opinion 1980–55.

Section 114.4(b)(2) Nonpartisan Registration and Voting Communications.

This paragraph has been added to incorporate the Commission's decision in Advisory Opinion 1980–20 into the regulations. It broadens the class of persons to whom a nonpartisan registration or voting communication may be made to include members of the general public. Under current § 114.4(c)(1), such communications are limited to employees of the corporation or labor organization.

Paragraph (b)(2)(i) contains three factors that the Commission may consider in determining whether a communication made under this section is nonpartisan. The first two factors generally follow current § 114.4(c)(1)(ii) but permit the list of candidates, if included, to name only those running for a particular seat or office rather than requiring the sponsor to print all the candidates on the official ballot. The third factor generally follows current § 114.4(c)(1)(i).

Paragraph (b)(2)(ii) expands the list of media through which a communication may be made under this section from that set forth in current § 114.4(c)(1).

Section 114.4(b)(3) Official Registration and Voting Information.

This subsection generally follows the provisions of current § 114.4(c)(2). Paragraph (b)(3)(iii) has been included consistent with the Commission's decision in Advisory Opinion 1980–55. That paragraph provides that a corporation or labor organization may donate funds to State or local election administrators to pay for the printing and distribution costs of official registration materials and voter information.

Section 114.4(b)(4) Voting Records.

This paragraph permits corporations and labor organizations to prepare and distribute nonpartisan voting records which contain a factual recital of an incumbent's or candidate's vote on bills and other measures. Voting records that contain indices or scores of votes on specific issues would be permissible if they are based on an individual's actual vote on a bill or other legislative measure. The preparation and distribution of such voting records under this subsection may not be for the purpose of influencing a Federal election.

Section 114.4(b)(5) Voter Guides.

Under paragraph (b)(5)(i), corporations and labor organizations may prepare and distribute nonpartisan voter guides which describe a candidate's position on campaign issues. Corporations and labor organizations may submit questions to candidates on one or more campaign issues and then print their responses. To ensure the nonpartisanship of such publications, this subsection lists six factors which the Commission may consider in determining whether a particular voter guide is nonpartisan. These factors are intended to be illustrative, not exhaustive, and are based in part upon factors articulated by the Internal Revenue Service in Revenue Rulings 78–248 and 80–282. The first factor in paragraph (b)(5)(i)(A) is whether the questionnaires are sent to all candidates running for a particular office. With regard to Presidential and Vice Presidential candidates however, only those candidates seeking a major party's nomination or who are on the general election ballot in enough States to win a majority of the electoral votes need be included. While permitting the sponsoring organization to impose restrictions on the length of the candidates' responses, paragraph (b)(5)(i)(B) requires that the sponsor reprint the candidates' responses without change or additional comment. If the candidates' responses exceed the stated word limit, the sponsor may choose to print the responses either in their entirety or after deleting that part of each response which exceeds the word limit.

Furthermore, under paragraph (b)(5)(i)(C), the Commission may consider whether the wording of the questions is slanted to suggest the sponsor's viewpoint on any issue. The next factor, in paragraph (b)(5)(i)(D), concerns whether the voter guide expresses an editorial opinion or indicates support for or opposition to any candidate or political party. Paragraph (b)(5)(i)(E) would permit the inclusion of biographical information on each candidate in the voter guide, such as schools attended, degrees earned, past employment and any office held. The sponsoring organization would also be allowed to limit the number of words on this information. Finally, paragraph (b)(5)(i)(F) concerns whether the voter guide is distributed in the geographic area in which the sponsoring organization normally operates.

Paragraph (b)(5)(ii) follows current § 114.4(c)(3). The reference to civic and nonprofit organizations in the current provisions of § 114.4(c)(3) has been changed to "nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties." Publications obtained from such organizations need not comply with the guidelines set forth at paragraphs (b)(5)(i) (A) through (F); however, they may not favor one candidate or political party over another.

Section 114.(c) Nonpartisan Registration and Get-Out-The-Vote Drives.

Section 114.(c)(1) Requirements for Conducting Nonpartisan Drives.

This paragraph generally follows current § 114.4(d). References to civic and nonprofit organizations in the current provisions of § 114.4(d) have been changed in the revised regulations to "nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties." In addition, this paragraph now permits co-

sponsorship by a State or local election agency. To meet the requirement that the drive be "conducted" by the tax-exempt organization or election agency, one or more persons from such co-sponsors must participate in the administration of the drive. This requirement does not preclude, however, the presence of corporate or labor organization personnel or members to assist in the activity. Paragraph (c)(1)(ii) allows corporations and labor organizations to set up a table or rack on their own premises for distributing official voting information without co-sponsorship with a tax-exempt organization.

Section 114.4(c)(2) Donation of Funds.

This paragraph incorporates the Commission's decision in Advisory Opinion 1980-55 into the regulations by providing that corporations and labor organizations may donate funds to State or local election administrators and nonpartisan tax-exempt organizations to defray the costs of registration and voting drives conducted by such officials and organizations.

Section 114.4(c)(3) Use of Personnel and Facilities.

This paragraph generally follows the provisions of current § 114.4(d)(3).

Section 114.4(c)(4) When Co-sponsorship Not Required.

This paragraph has been added to incorporate the Commission's decision in Advisory Opinion 1980-45. Pursuant to this paragraph, a nonpartisan tax-exempt organization may conduct registration and voting drives without the need for a co-sponsor.

Section 114.4(c)(5) Identification of Drive Sponsors.

This paragraph requires that any materials produced for use in connection with a registration or get-out-the-vote drive aimed at the general public contain the names of all the sponsors of the drive.

Section 114.4(d) Incorporated Membership Organizations, Incorporated Trade Associations, Incorporated Cooperatives and Corporations Without Capital Stock.

This paragraph permits corporations without capital stock, and incorporated membership organizations, trade associations and cooperatives to invite candidates, their representatives or the representatives of political parties to address the members or employees of the organization subject to the requirements of § 114.4(a)(2).

Conforming Amendments

Several conforming amendments have been made to other sections of Part 114. These amendments reflect the addition of a labor organization's executive and administrative personnel and the families of members of a membership organization to the restricted class of each type of organization.

List of Subjects in 11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 114 is amended as follows:

1. By revising §§ 114.3 and 114.4 paragraphs (a)-(d) as follows:

§ 114.3 Disbursements for communications in connection with a Federal election to restricted class.

(a) *General.* (1) A corporation may make communications including partisan communications to its stockholders and executive or administrative personnel and their families on any subject. A labor organization may make communications including partisan communications to its members and executive or administrative personnel and their families on any subject. Corporations and labor organizations may also make the nonpartisan communications permitted under 11 CFR 114.4 to their restricted class or any part of that class. No corporation or labor organization may make contributions or expenditures for partisan communications to the general public in connection with a federal election and no national bank or corporation organized by authority of any law of Congress may make contributions or expenditures for partisan communications to the general public in connection with any election to any political office including any State or local office.

(2) An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may communicate with its members and executive or administrative personnel, and their families, as permitted in 11 CFR 114.3 (a)(1) and (c), and shall report disbursements for partisan communications to the extent required by 11 CFR 100.8(b)(4) and 104.6.

(b) *Reporting Partisan Communications.* Disbursements for partisan communications made by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel and their families shall be reported to the extent required by 11 CFR 100.8(b)(4) and 104.6.

(c) *Means of Making Partisan Communications.* The means of making partisan communications for which disbursements must be reported under 11 CFR 114.3(b) include, but are not limited to, the examples set forth in 11 CFR 114.3(c) (1) through (4).

(1) *Partisan Publications.* Printed material of a partisan nature may be distributed by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel and their families, provided that:

(i) The material is produced at the expense of the corporation or labor organization; and

(ii) The material constitutes a communication of the views of the corporation or the labor organization, and is not the republication or reproduction in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents. A corporation or labor organization may, under this section, use brief quotations from speeches or other materials of a candidate that demonstrate the candidate's position as part of the corporation's or labor organization's expression of its own views.

(2) *Partisan Candidate and Party Appearances.* A corporation may allow a candidate or party representative to address its stockholders and executive or administrative personnel, and their families, at a meeting, convention or other function of the corporation. A labor organization may allow a candidate or party representative to address its members and executive or administrative personnel, and their families, at a meeting, convention or other function of the labor organization. Employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, limited invited guests and observers, and representatives of the news media may also be present during a candidate or party representative appearance under this section. The candidate or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party. The incidental solicitation of persons outside the

corporation's or labor organization's restricted class who may be present at the meeting as permitted by this section will not be a violation of 11 CFR 114.5(g).

(3) *Partisan Phone Banks.* A corporation may establish and operate phone banks to communicate with its stockholders and executive or administrative personnel, and their families, urging them to register and/or vote for a particular candidate or candidates, and a labor organization may establish and operate phone banks to communicate with its members and executive or administrative personnel, and their families, urging them to register and/or vote for a particular candidate or candidates.

(4) *Partisan Registration and Get-Out-The-Vote Drives.* A corporation may conduct registration and get-out-the-vote drives aimed at its stockholders and executive or administrative personnel, and their families, or a labor organization may conduct registration and get-out-the-vote drives aimed at its members and executive or administrative personnel, and their families. Registration and get-out-the-vote drives include providing transportation to the polls. Such drives may be partisan in that individuals may be urged to register with a particular party or to vote for a particular candidate or candidates, but assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connection with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

§ 114.4 Expenditures for Communications in Connection with a Federal Election to the Restricted Class and the General Public.

(a) *Nonpartisan Communications by a Corporation or Labor Organization to its Employees or its Restricted Class.* (1) *General.* (i) A corporation may make the nonpartisan communications permitted under 11 CFR 114.4 (b) and (c) to its stockholders, executive or administrative personnel, other employees, and their families. A labor organization may make such communications to its members, executive or administrative personnel, other employees, and their families. Communications which a corporation or labor organization may make only to its solicitable class are found at 11 CFR 114.3.

(ii) An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may make the communications permitted under 11 CFR 114.4 (b) and (c) to its members, executive or administrative personnel, other employees, and their families, as provided by 11 CFR 114.4(d). The organizations covered under this section will be treated as corporations for the purpose of making communications to the general public under 11 CFR 114.4 (b) and (c).

(2) *Nonpartisan Candidate and Party Appearances on Corporate Premises or at a Meeting, Convention or Other Function.* Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at a meeting, convention, or other function of the corporation to address or meet stockholders, executive or administrative personnel, and other employees of the corporation, and their families, under the conditions set forth in 11 CFR 114.4(a)(2) (i) through (v).

(i) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given the same opportunity to appear;

(ii) If a Presidential or Vice Presidential candidate or candidate's representative is permitted to address or meet employees, all candidates for that office who are seeking the nomination of a major party or who are on the general election ballot in enough States to win a majority of the electoral votes and who request to appear must be given the same opportunity to appear;

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties which had a candidate or candidates on the ballot in the last general election or which are actively engaged in placing or will have a candidate or candidates on the ballot in the next general election and who request to appear must be given the same opportunity to appear;

(iv) A corporation, its stockholders, executive or administrative personnel, or other employees of the corporation or its separate segregated fund shall make no effort, either oral or written, to solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section; and

(v) A corporation, its stockholders, executive or administrative personnel or other employees of the corporation or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, endorse, support or oppose any candidate, group of candidates or political party.

(3) *Nonpartisan Candidate and Party Appearances on Labor Organization Premises or at a Meeting, Convention or Other Function.* A labor organization may permit candidates, candidates' representatives or representatives of political parties on the labor organization's premises or at a meeting, convention, or other function of the labor organization to address or meet members, executive or administrative personnel, and other employees of the labor organization, and their families, if the conditions set forth in 11 CFR 114.4 (a)(2) (i) through (iii) and 11 CFR 114.4(a)(3) (i) and (ii) are met.

(i) An official, member, or employee of a labor organization or its separate segregated fund shall not make any effort, either oral or written, to solicit or direct or control contributions by members of the audience to any candidate or party representative under this section.

(ii) An official, member, or employee of a labor organization or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, endorse, support or oppose any candidate, group of candidates or political party.

(b) *Nonpartisan Communications by Corporations and Labor Organizations to the General Public.* (1) *General.* A corporation or labor organization may make the communications described in 11 CFR 114.4(b) (2) through (5) to the general public. The corporation or labor organization may include its logo or otherwise identify itself as the sponsor of the communication.

(2) *Nonpartisan Registration and Voting Communications.* A corporation or labor organization may make nonpartisan registration and get-out-the-vote communications to the general public.

(i) For purposes of 11 CFR 114.4(b)(2), the following are factors that the Commission may consider in determining whether a registration or get-out-the-vote communication is nonpartisan:

(A) It neither names nor depicts any particular candidate(s) or it names or depicts all candidates for a particular Federal office without favoring any candidate(s) over any other(s);

(B) It names no political party(s) except that it may include the political party affiliation of all candidates named or depicted under 11 CFR 114.4(b)(2)(i)(A);

(C) It is limited to urging acts such as voting and registering and to describing

the hours and places of registration and voting.

(ii) A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletters, brochures, or similar means of communication with the general public.

(3) *Official Registration and Voting Information.* (i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public if registration by mail is permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local agencies responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

(iv) the information and forms referred to in 11 CFR 114.4(b)(3)(i) through (iii) must be distributed in a nonpartisan manner, and the corporation or labor organization may not, in connection with the distribution, endorse, support, or otherwise promote registration with or voting for a particular party or candidate.

(4) *Voting Records.* A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election.

(5) *Voter Guides.*

(i) A corporation or labor organization may prepare and distribute to the general public nonpartisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions. The following are factors that the Commission may consider in determining whether a voter guide is nonpartisan:

(A) the questions are directed to all of the candidates for a particular seat or office, giving the candidates equal time to respond, except that in the case of Presidential and Vice Presidential candidates the questions may be directed only to those candidates seeking the nomination of a major party or to those appearing on the general election ballot in enough States to win a majority of the electoral votes;

(B) The voters guide reprints verbatim the responses of each candidate to whom questions were sent, without any additional comment, editing, or emphasis, although the sponsoring organization may impose limitations on the number of words per response when the questions are initially sent to the candidates for their comments;

(C) The wording of the questions presented does not suggest or favor any position on the issues covered;

(D) The voter guide expresses no editorial opinion concerning the issues presented nor does it indicate any support for or opposition to any candidate or political party;

(E) The sponsor may ask each candidate to provide biographical information such as education, employment positions, offices held, and community involvement and may impose a limitation on the number of words per submission;

(F) The voter guide is made available to the general public in the geographic area in which the sponsoring organization normally operates.

(ii) A corporation or labor organization may distribute voter guides or other types of brochures describing the candidates or their positions which are obtained from a nonprofit organization which is exempt from Federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties. Publications obtained from such nonprofit organizations need not comply with the guidelines set forth at 11 CFR 114.4(b)(5)(i), but they may not favor one candidate or political party over another.

(c) *Nonpartisan Registration and Get-Out-The-Vote Drives.* (1) *Requirements for Conducting Nonpartisan Drives.* (i) A corporation or labor organization may support nonpartisan voter registration drives which are not limited to its restricted class if the conditions in paragraph (c)(1)(i) (A) through (C) of this section are met. A corporation or labor organization may support nonpartisan get-out-the-vote drives, such as by transporting people to the polls, which drives are not limited to its restricted class if the conditions of paragraph (c)(1)(i) (A) through (C) of this section are met.

(A) The corporation or labor organization shall jointly sponsor the drives with a nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose candidates or political parties, or with a State or local agency which is responsible for the administration of elections; and

(B) The activities shall be conducted by the tax-exempt organization or by person authorized by a State or local agency; and

(C) These services shall be made available without regard to the voter's political preference.

(ii) For the purposes of 11 CFR 114.4(c)(1)(i)(B), a corporation or labor organization which provides space on the corporation's or labor organization's premises for a table, rack or booth from which official registration or voting information is distributed to the general public, and which provides its employees or members to aid in the distribution of such materials, shall not be considered to be "conducting" a registration or voting drive.

(2) *Donation of Funds.* A corporation or labor organization may donate funds to be used for nonpartisan registration drives to State or local agencies responsible for the administration of elections and to nonprofit organizations which are exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which do not support, endorse or oppose candidates or political parties.

(3) *Use of Personnel and Facilities.* A nonpartisan tax-exempt organization, or by persons authorized by the State or local agency, in conducting nonpartisan registration and get-out-the-vote activities, may utilize the employees and facilities of a corporation or the employees or members and facilities of a labor organization.

(4) *When Co-Sponsorship Not Required.* A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) and which does not support, endorse or oppose any candidates or political parties may conduct nonpartisan voter registration and get-out-the-vote activities on its own without a cosponsor.

(5) *Identification of Drive Sponsors.* All materials prepared for distribution to the general public in connection with the registration or voting drive shall include the full names of all drive sponsors.

(d) *Incorporated Membership Organizations, Incorporated Trade Associations, Incorporated Cooperatives and Corporations without Capital Stock.* An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other

function of the organization, provided that the conditions set forth in 11 CFR 114.4(a)(2) (i) through (v) are met.

(e) *Nonpartisan Candidate Debates.*

* * * * *

Conforming Amendments

2. By Revising § 114.1(a)(2)(i), (a)(2)(ii), the introductory text of (c), and (c)(2)(iv) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(i) Communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and executive or administrative personnel, and their families, on any subject;

(ii) Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and executive or administrative personnel, and their families;

* * * * *

(b) * * *

(c) "Executive or administrative personnel" means individuals employed by a corporation or labor organization who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) * * *

(2) * * *

(iv) Individuals who may be paid by the corporation or labor organization, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)–1, of the corporation or labor organization for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, section 3402.

* * * * *

3. By revising § 114.5(g)(2) and (l) as follows:

§ 114.5 Separate segregated funds.

* * * * *

(g) * * *

(2) A labor organization, or a separate segregated fund established by a labor organization is prohibited from soliciting contributions to such a fund from any person other than its members and executive or administrative personnel, and their families.

* * * * *

(l) *Methods permitted by law to labor organizations.* Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members and executive or administrative personnel.

4. By revising 114.7 (a), (e) and (h) as follows:

§ 114.7 Membership organizations, cooperatives or corporations without capital stock.

(a) Membership organizations, cooperatives, or corporations without capital stock, or separate segregated funds established by such persons may solicit contributions to the fund from members and executive or administrative personnel, and their families, of the organization, cooperative, or corporation without capital stock.

* * * * *

(e) There is no limitation upon the number of times an organization under this section may solicit its members and executive or administrative personnel, and their families.

* * * * *

(h) A membership organization, cooperative, or corporation without capital stock may communicate with its members and executive or administrative personnel, and their families, under the provisions of § 114.3.

* * * * *

5. By revising § 114.8 (h) and (i) as follows:

§ 114.8 Trade associations.

* * * * *

(h) *Communications other than solicitations.* A trade association may make communications, other than solicitations, to its members and their families under the provisions of § 114.3. When making communications to a member which is a corporation, the trade association may communicate with the representatives of the corporation with whom the trade association normally conducts the association's activities.

(i) *Trade association employees.* (1) A trade association may communicate with its executive or administrative personnel and their families under the provisions of § 114.3; a trade association may communicate with its other employees under the provisions of § 114.4.

(2) A trade association may solicit its executive or administrative personnel and their families under the provisions of § 114.5(g); a trade association may solicit its other employees under the provisions of § 114.6.

(2 U.S.C. 441b, 437d(a)(8))

Dated: October 27, 1983.

Danny Lee McDonald,

Chairman, Federal Election Commission.

[FR Doc. 83-29643 Filed 11-1-83; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-53-AD; Amendment 39-4764]

Airworthiness Directives; Pilatus Britten-Norman Ltd. Models BN-2, BN-2A and BN-2B Islander airplanes equipped with wing tip tanks (Mod NB/M/364) except MKIII Trislander Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directives (AD), applicable to certain Pilatus Britten-Norman Ltd., Models BN-2, BN-2A and BN-2B Islander airplanes equipped with wing tip tanks (Mod NB/M/364) except MKIII Trislander Series airplanes, which requires changes to the wing tip fuel tank selector switches, placarding and indicator lamps. Two accidents involving fuel mismanagement have occurred. The modifications of the switches, placarding and indicators will reduce the possibility of mismanagement of the tip tank fuel system.

EFFECTIVE DATE: December 8, 1983. Compliance: Within 100 hours time-in-service, but no later than December 31, 1983.

ADDRESSES: Pilatus Britten-Norman Ltd. Service Bulletin No. BN-2/SB.157, dated March 14, 1983, applicable to this AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, 1000 Brussels, Belgium. Telephone 513.38.30; or L. Werth, Foreign FAR 23 Section, FAA ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring changes in the wing tip fuel tank selector switches, system placarding and selection indicator lamps on certain Pilatus Britten-Norman Ltd., Models BN-2, BN-2A and BN-2B Islander Series airplanes was published in the **Federal Register** on May 31, 1983 (48 FR 24089, 24090). The proposal resulted from the findings of two accident investigations which indicated the pilots may not have understood proper operation of the fuel system. The manufacturer initiated changes in the wing tip fuel tank selector switches, system placarding and selection indicator lamps, on aircraft currently in production and made available a kit and instructions in Pilatus Britten-Norman Ltd. Service Bulletin No. BN-2/SB.157, dated March 14, 1983, for incorporating these changes on airplanes in service with wing tip tanks (Mod NB/M/364) installed.

The United Kingdom Civil Aviation Authority (UKCAA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of the pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Service Bulletin No. BN-2/SB.157, dated March 14, 1983, and the mandatory classification of this Service Bulletin by the UKCAA.

Based on the foregoing, the FAA has determined that the condition addressed by Service Bulletin No. BN-2/SB.157, dated March 14, 1983, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Consequently, an AD was proposed which would require changes in the wing tip fuel tank selector switches, placarding and indicator lamps on the affected airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public.

The FAA has noted, however, that to insure clarity and full compliance with the AD, reference should be made to the specific flight manual supplement that must be incorported in the flight manual of each particular airplane model. Also a paragraph authorizing incorporation of the supplements in the AFM by a certificated pilot was inadvertently omitted from the notice. Thus the NPRM as published has been changed by:

(1) Inserting subparagraph (a)(1) immediately after paragraph (a).

This paragraph specifies the supplement that must be inserted in the appropriate airplane flight manual for each of the affected airplanes.

(2) Inserting subparagraph (a)(2) immediately after subparagraph (a)(1). This paragraph permits individuals holding a pilot certificate to accomplish the flight manual revision.

The costs that are associated with this AD are estimated to be $140 for each of the 34 airplanes in service. The total is estimated to be $4,760. For these reasons, the 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.

Accordingly, the rule is adopted with the above discussed changes.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

Pilatus Britten-Norman Ltd: Applies to Models BN-2, BN-2A and BN-2B Islander Series Airplanes equipped with wing tip tanks (Mod NB/M/364) certificated in any category except BN-2A MKIII Series Trislander Airplanes.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, but no later than December 31, 1983, unless already accomplished.

To preclude fuel mismanagement and possible fuel starvation, accomplish the following:

(a) Modify the wing tip tank fuel management system in accordance with steps 1. through 12. of the ACTION section of Pilatus Britten-Norman Ltd. Service Bulletin No. BN-2/SB.157, dated March 14, 1983.

(1) Upon completion of the modification described in paragraph (a) Update and annotate the appropriate airplane flight manual as follows:

(i) BN-2A-3 Model: insert Issue 4 of Supplement No. 8 to Section 7 of Flight Manual FM/10 dated March 4, 1983;

(ii) BN-2A-9 Model: insert Issue 2 of Supplement No. 16 to Section 7 of Flight Manual FM/2 dated March 4, 1983;

(iii) BN-2A-21 Model: insert Issue 4 of Supplement No. 8 to Section 7 of Flight Manual FM/10 dated March 4, 1983;

(iv) BN-2A-27 Model: insert Issue 2 of Supplement No. 1 to Section 7 of Flight Manual FM/20 dated March 4, 1983;

(v) BN-2B-21 Model: insert Issue 3 of Supplement No. 1 to Section 7 of Flight Manual FM/43 dated March 4, 1983;

(vi) BN-2B-27 Model: insert Issue 5 of Supplement No. 1 to Section 7 of Flight Manual FM/42 dated March 4, 1983.

Note:— The requirement for insertion of specific revisions in the affected Airplane Flight Manuals does not prohibit incorporation of later revisions containing the same information.

(2) The requirement of paragraph (a)(1) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him. The person accomplishing this action must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(b) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on December 8, 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.— For the reasons discussed earlier in this rulemaking action, 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 since it involves few, if any, 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 Rules Docket under the caption "**ADDRESSES.**"

Issued in Kansas City, Missouri, on October 21, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-29666 Filed 11-1-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 83-AWA-23]

Alteration of VOR Federal Airways and Jet Routes; State of Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule realigns segments of VOR Federal Airways V-114, V-212, V-245 and Jet Routes J-50 and J-58; and establishes new airways V-542 and V-544. This rule is issued due to the decommissioning of the Alexandria, LA, VORTAC and the upgrading of the Esler, LA, VOR.

EFFECTIVE DATE: January 19, 1984.

FOR FURTHER INFORMATION CONTACT: Boyd V. Archer, 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) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On August 29, 1983, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign segments of VOR Federal Airways V-114, V-212, V-245 and Jet Routes J-50 and J-58; and to establish new V-542 and V-544 (48 FR 39080). The FAA has decommissioned the Alexandria, LA, VORTAC and simultaneously the Esler, LA, VOR has been upgraded with new solid state equipment, changed to a VORTAC, and will be commissioned. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as the proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations are to realign segments of VOR Federal Airways V-114, V-212, V-245 and Jet Routes J-50 and J-58; and to establish new V-542 and V-544. The FAA has decommissioned the Alexandria, LA, VORTAC and simultaneously the Esler, LA, VOR has been upgraded with new solid state equipment, changed to a VORTAC, and has been commissioned.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways, Jet routes, Aviation safety.

Adoption of the Amendments

PARTS 71 AND 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regualtions (14 CFR Parts 71 and 75), are amended, effective 0901 GMT, January 19, 1984, as follows:

1. V-114 [Amended]

By deleting the words "; Alexandria, LA, including a north alternate from Gregg County to Alexandria via Shreveport, LA, and INT Shreveport 176° and Alexandria 302° radials; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline) Baton Rouge; New Orleans, LA, including a north alternate from Alexandria to New Orleans via INT Alexandria 109° and New Orleans 312° radials, excluding the portion within R-3801B, R-3801C and R-3801D." and substituting the words ", via INT Gregg County 121° and Esler, LA, 288° radials; Esler; Baton Rouge, LA; to New Orleans, LA."

2. V-212 [Amended]

By deleting the words "; Alexandria, LA" and substituting the words ", via INT Lufkin 088° and Esler, LA, 253° radials; Esler" and also deleting ", including a north alternate via Natchez, MS"

3. V-245 [Amended]

By deleting the words "Alexandria, LA, via"

4. V-542 [New]

From Gregg County, TX; via Shreveport, LA; via INT Shreveport 166° and Esler, LA, 288° radials; Esler; via INT Esler 122° and New Orleans, LA, 312° radials; New Orleans.

5. V-544 [New]

From Esler, LA; via Natchez, MS; to McComb, MS.

6. J-50 [Amended]

By deleting the words "INT of the Lufkin 086° and the Alexandria, LA, 270° radials; Alexandria;"

7. J-58 [Amended]

By deleting the words ", Alexandria, LA; INT of the Alexandria 126° and the New Orleans, LA, 295° radials; New Orleans" and substituting the words "; Esler, LA; New Orleans, LA"

(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 11.69)

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

Issued in Washington, D.C., on October 25, 1983.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-29669 Filed 11-1-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 21022A; Reg. Notice No. 91-100]

Emergency Air Traffic Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Update of emergency air traffic regulations.

SUMMARY: Section 91.100 of the Federal Aviation Regulations (FAR) (14 CFR 91.100) requires aircraft operators to comply with emergency air traffic regulations issued under that section and covered by Notices to Airmen (NOTAM's) that are also issued under that section. This document provides notice of regulations already adopted that were immediately effective under § 91.100, for which the FAA has also issued NOTAM's. It adds, to Notice 91-100, emergency regulations implementing Special Federal Aviation Regulation (SFAR) No. 44, as amended, that were necessary to respond to a shortage in air traffic control personnel.

EFFECTIVE DATE/TIME: As stated in each regulation listed.

ADDRESSES: Send comments on the listed regulations, in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21022A, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket, Room 915, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: B. Keith Potts, Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591, telephone (202) 426-3731.

SUPPLEMENTARY INFORMATION:

Comments Invited

The regulations issued under § 91.100 and listed herein are emergency final rules involving immediate air traffic requirements throughout the United States. The need for immediate regulatory response under § 91.100 is stated at 46 FR 16666, *et seq.* In issuing the regulations in this notice, the FAA has found that the conditions cited in § 91.100 exist or will exist and that the regulations are necessary in order to respond to those conditions in the public interest. Where necessary, these regulations may be supplemented or amended hourly, or even more frequently, as air traffic conditions change. Accordingly, good cause exists for making these regulations effective immediately, without prior notice and public procedure.

Comments are invited on any aspect of the listed regulations, individually or cumulatively, and on any aspect of the emergency air traffic control conditions they respond to. When § 91.100 was issued, the FAA noted that it was an emergency regulation under Executive Order 12291 and DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and had no cost impact in itself since it was only procedural. However, the FAA also stated (at 46 FR 16669) that the regulations distributed in accordance with § 91.100 will be evaluated individually, as appropriate, to determine whether they have cost impacts. To assist the FAA in determining, as soon as practicable after issuance, the cost impacts of the regulations issued under § 91.100, comments on economic impact are specifically invited.

Commenters wishing the FAA to acknowledge receipt of their comments in response to these rules must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 21022A." The postcard will be date/time stamped and returned to the commenter.

Effect of Publication

Publication, in the **Federal Register**, of emergency air traffic regulations issued under § 91.100 provides constructive legal notice of those regulations to all persons who may not have received the NOTAM's concerning those regulations or who otherwise may not have legal notice of the adoption of those regulations. This document provides this constructive legal notice of immediately effective emergency regulations that have already been adopted. Additional emergency rules will be published periodically if the need for their adoption continues.

Availability Prior to Publication: Preflight Requirement

Since there is a necessary time lag between the issuance of emergency air traffic regulations and NOTAM's under § 91.100 and the publication of these regulations in the **Federal Register**, and since these regulations and NOTAM's respond to emergency conditions that exist, or will exist, relating to the FAA's ability to operate the air traffic control system, the NOTAM's concerning these regulations are available at operating air traffic facilities and regional air traffic division offices prior to **Federal Register** publication and as long as they remain effective. Under § 91.5 *Preflight Action* (14 CFR 91.5), each pilot in command is required to familiarize himself or herself with all available information concerning each flight.

Air Traffic Controller Shortage: SFAR No. 44, as Amended

The air traffic regulations listed in this amendment to Notice 91-100 follow the adoption of SFAR Nos. 44 through 44-6, in response to an organized air traffic controller job action. The emergency aspects of that action are described at 46 FR 39997, *et seq.* As a result, air traffic control facilities have experienced staffing shortages that have reduced the level of air traffic that can be handled with the required levels of safety and efficiency. To ensure that these levels of safety and efficiency are fully maintained during this shortage of air traffic personnel, the emergency regulations listed in section 2 of this notice have been issued under § 91.100.

Regulatory Impact

The FAA has determined that the regulations listed in this notice are emergency regulations that are not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to these regulations, since they were issued in response to existing or expected emergency conditions relative to FAA's ability to operate the air traffic control system. It has been further determined that the listed regulations are emergency regulations under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If these regulations are later determined to be significant, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 91

Air traffic control, Airspace, Aviation safety.

Notice of Adoption

PART 91—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator in § 91.100 of the Federal Aviation Regulations (14 CFR 91.100; 46 FR 16666, March 13, 1981) and that cited below, the following emergency air traffic regulations have been adopted and covered by NOTAM's under that section.

Secs. 307, 313(a), 601, 603, 902, 1110, and 1202, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a), 1421, 1442, 1443, 1472, 1510, and 1522); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)

In consideration of the foregoing, section 2 of Notice 91-100 is hereby amended by adding the following emergency regulations following the regulation numbered FDC No. 3/1299.

Air Traffic Controller Shortage of 1981, and Related Emergency Conditions (SFAR-44, as amended; Docket No. 21022A)

* * * * *

FDC 3/1917 Emegency Flight Rules—IFR Flight Plan Filing/General Aviation Reservation Rule, effective 1830 GMT, September 6, 1983.

The IFR capacity of the en route ATC system is increasing and permits planned gradual elimination of the General Aviation Reservation (GAR) rule. However, existing restrictions under the GAR rule remain in effect and will continue in effect after December 31, 1983, for operations from airports that are capacity controlled by SFAR 44 as amended. Also, this rule corrects an error in the August 11, 1983 **Federal Register** (48 FR 36442).

Accordingly, pursuant to SFAR 44, as amended, and Section 91.100 of the Federal Aviation Regulations, the following regulation is effective immediately, unless otherwise specified:

1. All aircraft operators planning a flight under IFR with a proposed departure/en route pick-up time from 0600 local to 1959 local shall file a flight plan with and obtain a departure/en route pick-up reservation from an FAA flight service station at least 30 minutes before but not more than 24 hours before his/her proposed departure/en route

time if any segment of the flight will enter ARTCC airspace.

2. ATC clearance must be requested not later than 1 hour after proposed departure/en route pick-up time.

3. Multiple-leg Flight Plans may be filed provided:

A. The conditions of paragraph 1 above are met.

B. The last proposed departure/en route pick-up time does not exceed the 24-hour filing time limitation specified in paragraph 1 above.

C. The same departure/en route pick-up point is not specified twice in the request.

D. The request does not involve more than three departure/en route pick-up points.

4. The provisions of this regulation do not apply to the following operators and flights:

A. FAR Part 121 or Part 135 operators with FAA/ICAO approved two-letter or three-letter call signs.

B. Military flights.

C. Medical emergency flights.

D. Presidential or Vice-Presidential flights.

E. FAA critical flights.

F. NASA flights supporting space shuttle launch and recovery operations during periods designated by the Director, Air Traffic Service.

G. Flights to or from Washington National, John F. Kennedy, LaGuardia, and O'Hare Airports during periods when reservations are required by Subpart K of FAR Part 93—High Density Traffic Airports.

H. Flights originating within the airspace areas of Anchorage and Honolulu ARTCC's.

I. Turbojet aircraft operations at FL 290 and above to a destination 200 nautical miles or more from the point of departure.

J. Nonstop flights destined for airports outside the continental United States.

K. Intra-ARTCC.

L. Inter-ARTCC—

(1) Effective immediately, flights within the airspace of any of the following groups—

(a) Seattle, Salt Lake, Oakland, and Los Angeles;

(b) Albuquerque, Kansas City, Memphis, Denver; and Ft. Worth;

(c) Cleveland and Boston (turboprops only);

(d) Atlanta, Jacksonville, Washington, Miami, and Houston; and

(e) New York and Boston.

(2) Effective 0600 local time on the dates specified, flights within the airspace of any of the following groups—

(a) September 9, 1983—Minneapolis, Chicago, Indianapolis, Cleveland, New York, and Boston;

(b) October 1, 1983—Seattle, Salt Lake City, Oakland, Los Angeles, Albuquerque, Kansas City, Memphis, Denver, and Ft. Worth; and

(c) October 30, 1983—Seattle, Salt Lake City, Oakland, Los Angeles, Albuquerque, Kansas City, Memphis, Denver, Ft. Worth, Atlanta, Jacksonville, Washington, Miami, and Houston.

M. Effective 0600 local time, December 31, 1983, any operator or flight.

5. Notwithstanding 4K, 4L, and 4M above, this rule applies to flights from airports that are capacity controlled by SFAR 44, as amended.

6. Limitations on obtaining an IFR clearance while airborne remain in effect in the Anchorage ARTCC areas as specified in the pertinent regulatory NOTAM.

Cancel FDC NOTAM 3/1299.

Issued in Washington, D.C., on October 25, 1983.

R. J. Van Vuren,

Director, Air Traffic Service.

[FR Doc. 83-29667 Filed 11-1-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 23811; Amdt. No. 1254]

Air Traffic and General Operating Rules; 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 Inquiry 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 Standards Branch (AFO-230), Air Transportation 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 relationships 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

PART 97—[AMENDED]

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 January 19, 1984*

Alexandria, LA—Esler Regional, VOR RWY 14, Amdt. 12
Alexandria, LA—Esler Regional, VOR/DME RWY 32, Amdt. 13
Bunkie, LA—Bunkie Muni, VOR/DME-A, Amdt. 1, Cancelled
Pineville, LA—Pineville Muni, VOR-A, Amdt. 3

** * * Effective December 22, 1983*

Chicago/Wheeling, IL—Pal-Waukee, VOR RWY 16, Amdt. 19
Grand Forks, ND—Grand Forks Intl, VOR RWY 17, Amdt. 2
Grand Forks, ND—Grand Forks Intl, VOR/DME or TACAN RWY 17, Amdt. 9, Cancelled
Grand Forks, ND—Grand Forks Intl, VOR RWY 35, Amdt. 2
Grand Forks, ND—Grand Forks Intl, VOR/DME or TACAN RWY 35, Amdt. 9, Cancelled

** * * Effective December 8, 1983*

Ft. Lauderdale, FL—Ft Lauderdale-Hollywood Intl, VOR RWY 9L, Amdt. 17
Sarasota/Bradenton, FL—Sarasota-Bradenton, VOR RWY 14, Amdt. 14
Sarasota/Bradenton, FL—Sarasota-Bradenton, VOR RWY 22, Amdt. 8
Sarasota/Bradenton, FL—Sarasota-Bradenton, VOR RWY 32, Amdt. 5
Athens, GA—Athens Muni, VOR RWY 2, Amdt. 9
Athens, GA—Athens Muni, VOR RWY 27, Amdt. 9
Madison, GA—Madison Muni, VOR/DME-A, Amdt. 4
Winder, GA—Winder, VOR/DME-A, Amdt. 8
Ames, IA—Ames Muni, VOR RWY 31,Amdt. 7
Oskaloosa, IA—Oskaloosa Muni, VOR/DME RWY 31, Amdt. 2
Washington, IA—Washington Muni, VOR/DME-A, Amdt. 2
Topeka, KS—Forbes Field, VOR/DME or TACAN RWY 3, Amdt. 4
Topeka, KS—Forbes Field, VOR/DME or TACAN RWY 21, Amdt. 5
Ionia, MI—Ionia County, VOR RWY 27, Amdt. 6
Salem, MI—Salem, VOR-A, Amdt. 4, Cancelled
Kennett, MO—Kennett Memorial, VOR RWY 35, Amdt. 3
Saranac Lake, NY—Adirondack, VOR/DME RWY 5, Amdt. 2
Syracuse, NY—Syracuse Hancock Intl, VOR RWY 14, Amdt. 17
Monroe, NC—Monroe, VOR-A, Amdt. 7
Salisbury, NC—Rowan County, VOR-A, Amdt. 2
Upper Sandusky, OH—Wyandot County, VOR-A, Amdt. 2
Ardmore, OK—Ardmore Muni, VOR RWY 4, Amdt. 15
Philadelphia, PA—Northeast Philadelphia, VOR RWY 6, Amdt. 10
Philadelphia, PA—Northeast Philadelphia, VOR RWY 24, Amdt. 18
Gallatin, TN—Gallatin Muni, VOR/DME-A, Amdt. 4, Cancelled
Burlington (Mt Vernon), WA—Skagit Regional/Bay View, VOR RWY 10, Amdt. 1, * * * Cancelled
Bluefield, WV—Mercer County, VOR RWY 23, Amdt. 6
Bluefield, WV—Mercer County, VOR/DME RWY 23, Amdt. 1

** * * Effective November 24, 1983*

Willmar, MN—Willmar Muni, VOR RWY 10, Orig.
Willmar, MN—Willmar Muni, VOR RWY 10, Amdt. 9, Cancelled
Willmar, MN—Willmar Muni, VOR RWY 28, Orig.
Willmar, MN—Willmar Muni, VOR RWY 28, Amdt. 4, Cancelled
Clovis, NM—Clovis Muni, VOR/DME RWY 21, Amdt. 4, Cancelled
Clovis, NM—Clovis Muni, VOR RWY 22, Admt. 1
Yakima, WA—Yakima Air Terminal, VOR-A, Amdt. 5
Yakima, WA—Yakima Air Terminal, VOR/DME or TACAN RWY 27, Amdt. 6
LaCrosse, WI—LaCrosse Muni, VOR RWY 13, Amdt. 23
LaCrosse, WI—LaCrosse Muni, VOR RWY 36, Amdt. 24

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

** * * Effective January 19, 1984*

Alexandria, LA—Esler Regional, LOC BC RWY 8, Amdt. 8

** * * Effective December 22, 1983*

Grand Forks, ND—Grand Forks Intl, LOC BC RWY 17, Amdt. 7

** * * Effective December 8, 1983*

Sarasota/Bradenton, FL—Sarasota-Bradenton, LOC/DME BC RWY 14, Amdt. 3
Ames, IA—Ames Muni, LOC RWY 31, Amdt. 2
Lake Charles, LA—Lake Charles Muni, LOC BC RWY 33, Amdt. 14
Ardmore, OK—Ardmore Muni, LOC RWY 30, Amdt. 1
Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 2

** * * Effective November 24, 1983*

Ukiah, CA-Ukiah Muni, LOC/DME RWY 15, Orig.
Clovis, NM-Clovis Muni, LOC RWY 4, Amdt. 1
Yakima, WA-Yakima Air Terminal, LOC/DME BC-B, Amdt. 1

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

** * * Effective January 19, 1984*

Alexandria, LA-Esler Regional, NDB RWY 26, Amdt. 7
DeRidder, LA-Beauregard Parish, NDB RWY 36, Amdt. 1
New Roads, LA- False River Airpark, NDB RWY 36, Amdt. 1
Jasper, TX-Jasper County Airport-Bell Field, NDB-A, Amdt. 2
Jasper, TX-Jasper County Airport-Bell Field, NDB RWY 17, Amdt. 4

** * * Effective December 22, 1983*

Dallas-Fort Worth, TX-Dallas-Fort Worth Regional, NDB RWY 17R, Amdt. 5
Dallas-Fort Worth, TX-Dallas-Fort Worth Regional, NDB RWY 35R, Amdt. 5

** * * Effective December 8, 1983*

Sarasota/Bradenton, FL-Sarasota-Bradenton, NDB RWY 32, Amdt. 3
Cordele, GA-Crisp County-Cordele, NDB RWY 9, Orig.
Ames, IA-Ames Muni, NDB RWY 13, Amdt. 2
Ames, IA-Ames Muni, NDB RWY 31, Amdt. 8
Boone, IA-Boone Muni, NDB RWY 14, Amdt. 6
Boone, IA-Boone Muni, NDB RWY 32, Amdt. 2
Oskaloosa, IA-Oskaloosa Muni, NDB RWY 22, Amdt. 2
Vinton, IA-Vinton Veterans Meml Arpk, NDB RWY 27, Amdt. 1
Washington, IA-Washington Muni, NDB RWY 31, Amdt. 4
Topeka, KS-Forbes Field, NDB RWY 13, Amdt. 4
Vicksburg, MS-Vicksburg Muni, NDB RWY 1, Amdt. 4, Cancelled
Vicksburg, MS-Vicksburg Muni, NDB RWY 1, Orig.
Charlotte, NC-Charlotte/Douglas Intl, NDB RWY 5, Amdt. 26
Charlotte, NC-Charlotte/Douglas Intl, NDB RWY 23, Amdt. 2
Mt Airy, NC-Mt Airy-Surry County, NDB-A, Amdt. 1
West Union, OH-Alexander Salamon, NDB RWY 23, Amdt. 1
Ardmore, OK-Ardmore Muni, NDB RWY 30, Amdt. 1
Reading, PA-Reading Muni, Gen Carl A Spaatz Field, NDB RWY 36, Amdt. 21
Bremerton, WA-Bremerton National, NDB RWY 1, Amdt. 13

** * * Effective November 24, 1983*

Clovis, NM-Clovis Muni, NDB RWY 4, Amdt. 1

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

** * * Effective January 19, 1984*

Alexandria, LA-Esler Regional, ILS RWY 26, Amdt. 11
Dallas-Fort Worth, TX-Dallas-Fort Worth Regional, ILS RWY 18L, Amdt. 12

** * * Effective December 22, 1983*

Chicago/Wheeling, IL-Pal-Waukee, ILS RWY 16, Amdt. 5
Grand Forks, ND-Grand Forks Intl, ILS RWY 35, Amdt. 6
Dallas-Fort Worth, TX-Dallas-Fort Worth Regional, ILS RWY 17R, Amdt. 11

** * * Effective December 8, 1983*

Sarasota/Bradenton, FL-Sarasota-Bradenton, ILS RWY 32, Amdt. 2
Topeka, KS-Forbes Field, ILS RWY 31, Amdt. 6
Lafayette, LA-Lafayette Regional, ILS RWY 21, Amdt. 2
Lake Charles, LA-Lake Charles Muni, ILS RWY 15, Amdt. 17
Syracuse, NY-Syracuse Hancock Intl, ILS RWY 28, Amdt. 27
Charlotte, NC-Charlotte/Douglas Intl, ILS RWY 5, Amdt. 29
Reading, PA-Reading Muni, Gen Carl A Spaatz Field, ILS RWY 36, Amdt. 26
Bremerton, WA-Bremerton National, ILS RWY 19, Amdt. 10

** * * Effective November 24, 1983*

Yakima, WA-Yakima Air Terminal, ILS RWY 27, Amdt. 25

** * * Effective October 17, 1983*

Charleston, WV-Kanawha, ILS RWY 5, Amdt. 1

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

** * * Effective December 8, 1983*

Ft Lauderdale, FL—Ft Lauderdale-Hollywood Intl, RADAR-1, Amdt. 3
Sarasota/Bradenton, FL—Sarasota-Bradenton, RADAR-1, Amdt. 4
Syracuse, NY—Syracuse Hancock Intl, RADAR-1, Amdt. 4
Charlotte, NC—Charlotte/Douglas Intl, RADAR-1, Amdt. 16
Philadelphia, PA—Philadelphia Intl, RADAR-1, Amdt. 16
Gallatin, TN—Gallatin Muni, RADAR-1, Orig.

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

** * * Effective December 8, 1983*

Washington, DC—Washington National, RNAV-A, Amdt. 4
Athens, GA—Athens Muni, RNAV RWY 20, Amdt. 1
Ames, IA—Ames Muni, RNAV RWY 31, Amdt. 4
Washington, IA—Washington, Muni, RNAV RWY 31, Amdt. 2
Topeka, KS—Forbes Field, RNAV RWY 13, Amdt. 2
Charlotte, NC—Charlotte/Douglas Intl, RNAV RWY 23, Amdt. 2
Gastonia, NC—Gastonia Muni, RNAV RWY 3, Amdt. 2, Cancelled
Gastonia, NC—Gastonia Muni, RNAV RWY 3, Orig.
Kenton, OH—Hardin County, RNAV RWY 22, Orig.
Reading, PA—Reading Muni, Gen Carl A Spaatz Field, RNAV RWY 13, Amdt. 5
Reading, PA—Reading Muni, Gen Carl A Spaatz Field, RNAV RWY 18, Amdt. 5

7. By amending Part 97.35 COPTER SIAPs identified as follows:

** * * Effective December 8, 1983*

Boone, IA—Boone Muni, COPTER NDB 225°, Orig.

(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.

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.

Issued in Washington, D.C. on October 28, 1983.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 83-29671 Filed 11-1-83; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1017

Security Regulation for Confidential Business Information Obtained From EPA

AGENCY: Consumer Product Safety Commission.

ACTION: Final regulation.

SUMMARY: The Commission issues a regulation establishing security procedures for safeguarding confidential business information obtained by the Commission from the Environmental Protection Agency (EPA). The Commission intends that at this time the procedures in Subparts B through G of Part 1017 will apply only to confidential business information obtained by EPA under the Toxic Substances Control Act (TSCA) which the EPA shares with the Commission.

EFFECTIVE DATE: November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Dorothy Drago, Directorate for Epidemiology (301-492-6468), Consumer Product Safety Commission, Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission (CPSC) is responsible under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*, for, among other things, protecting the public against unreasonable risks of injury associated with consumer products, and promoting research and investigation into the causes and prevention of product-related deaths, illnesses and injuries. 15 U.S.C. 2051(b)(4). In carrying out these responsibilities, the Commission is required to conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary. 15 U.S.C. 2054(a)(2). It may conduct research, studies, and

investigations on the safety of consumer products and on improving the safety of such products, 15 U.S.C. 2054(b)(1).

In some instances, the Commission, in carrying out its responsibilities, receives reports or obtains from businesses and/or government agencies information that contains trade secrets or other proprietary data. Section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), as amended by the Consumer Product Safety Amendments of 1981 (Pub. L. 97–35, 95 Stat. 703–752), requires the Commission to keep such information confidential. In some instances, the nature of confidential information reported to or obtained by the Commission requires the Commission to take extraordinary security procedures to prevent unauthorized disclosure of the information. For example, the Commission determined that certain special procedures were necessary to safeguard chemical product formula information submitted to it by chemical manufacturers in response to its special order of August 21, 1975 (40 FR 36617). The Commission published security procedures for safeguarding that information, and other similar information, at 16 CFR Part 1017, Subpart B.

The Commission, as part of its investigative and/or regulatory activities, anticipates requesting the Environmental Protection Agency (EPA) to provide it with "Confidential Business Information" (CBI) that EPA has received under (TSCA).[1] The EPA will furnish this information to the Commission *only* if the Commission meets EPA's standards for maintaining the security of the information and promises to treat the information as confidential in accordance with EPA's regulations at 40 CFR Part 2.

Proposal of July 7, 1982

On July 7, 1982, the Commission published a notice (47 FR 29562 *et seq.*) proposing to revise its security procedures at 16 CFR Part 1017 by adding Subart A, revoking and revising Subpart B, and by adding Subparts C, D, E, F and G. The regulation was proposed to establish security procedures for safeguarding the CBI the Commission received from EPA and the chemical product formula data submitted to the Commission in response to its special order of August 21, 1975 (40 FR 36617). (The latter was previously covered under 16 CFR Part 1017, Subpart B. It is now Subpart H, instead of Subpart A, the latter being reserved at this time.) The July 7, 1982 notice provided for a 60-day period for public comment.

Comments on Proposal

In response to the July 7, 1982 notice, the Commission received comments from two companies.

One commenter, Coleman Company, Inc., objected to the proposed regulation as being arbitrary and unreasonably narrow, stating that Section 6(a)(2) of the Consumer Product Safety Act (CPSA) does not authorize the Commission to determine that certain types of information are more important than others; further, that the security procedures followed by other Federal agencies are given general applicability.

The fact is that the Commission already invokes security procedures in its efforts to assure security for confidential information entrusted to it. The precedent for establishing special security procedures was set some time ago.

Special procedures were established (16 CFR Part 1017, Subpart B) to protect the security of confidential chemical product formula data submitted in response to CPSC's special order of August 21, 1975. Further, the Commission periodically undertakes to review, evaluate and, if necessary, revise current security procedures to further assure the security of such information.

The EPA will furnish the Commission information obtained by it pursuant to TSCA *only* if the Commission implements EPA's standards for maintaining the security of the information and promises to treat the information as confidential in accordance with EPA's regulations at 40 CFR Part 2—hence, the requirement for the Commission to establish the special procedures proposed on July 7, 1982. The Commission does not propose to make these special procedures applicable for other confidential information, because present procedures are deemed adequate and to do so would result in unnecessary administrative burden and cost.

The Commission, however, is revising the proposed regulation by retaining the procedures for safeguarding the chemical product formula data submitted pursuant to its special order of August 21, 1975 (formerly set forth at 16 CFR Part 1017, Subpart B) and redesignating it as 16 CFR Part 1017, Subpart H; and designating the new procedures for safeguarding the confidentiality of CBI obtained from EPA (which the latter receives pursuant to TSCA) as 16 CFR Part 1017, Subparts B, C, D, E, F and G.

The other company, Polaroid Corporation, commented as follows:

1. Section 1017.1 of the regulation, setting forth its purpose and scope, should expressly state that no disclosure of TSCA CBI shall be permitted except as expressly authorized by Section 14 of TSCA (15 U.S.C. 2613), Section 6 of the CPSA as amended (15 U.S.C. 2055) and by this regulation.

The Commission has revised this section to state that no disclosure of CBI shall be permitted except as authorized by Section 6 of the CPSA and this regulation. The combined effect of section 6 of the CPSA (the Commission's enabling statute) and this rule is believed adequate to limit access to those with a "need to know" who have already obtained access authorization. The inclusion of reference to Section 14 of the TSCA would not provide any further limitation of access and might result in ambiguity as to the role of the EPA Administrator with respect to materials provided to the Commission.

2. Polaroid stated that the regulation, as proposed, authorized the Commission to disclose TSCA CBI received from EPA to contractors and subcontractors, which disclosure, Polaroid contends, is prohibited by Section 14 of TSCA and Section 6 of the Consumer Product Safety Act. Polaroid further contends that neither TSCA nor the CPSA authorizes disclosure to subcontractors.

Since receiving the comment, Commission staff has determined, through EPA's Office of General Counsel, that EPA considers subcontractors as "contractors." In fact, the 1978 TSCA Confidential Business Information Security Manual, Chapter V, page 26 (TSCA Security Manual) sets forth circumstances and procedures under which TSCA CBI may be furnished by EPA to a contractor *or* subcontractor.)

EPA regulation 40 CFR 2.209 sets forth the circumstances under which EPA may disclose CBI to other agencies and states. 40 CFR 2.209(c)(5) provides that EPA may disclose the confidential information if the other agency agrees in writing not to disclose it unless (i) the other agency has statutory authority both to compel firms to furnish the information and to make the proposed

[1] The term "Confidential Business Information" is defined in EPA's TSCA Confidential Business Information Security Manual July 1978, as meaning, "* * * any information in any form received by EPA for any person, firm, partnership, corporation, association, or local, state, or Federal agency, or foreign government, which contains trade secrets or commercial or financial information, and which has been claimed as confidential by the person submitting it and which has not been determined to be non-confidential under the procedures in 40 CFR Part 2". A copy of the manual is available from EPA's Office of Industry Assistance, Room 511, East Tower, 401 M Street, SW., Washington, D.C. 20460 or from the Commission's Office of the Secretary, Washington, D.C. 20207

disclosure, and (ii) the other agency has, prior to disclosure of the information to anyone other than its officers and employees, furnished to each affected business at least the same notice to which the affected business would be entitled under this subpart.

Pursuant to Sections 27(b)(1), (3) and (4) and 27(e) of the CPSA (15 U.S.C. 2076(b)(1), (3) and (4) and (e), respectively), the Consumer Product Safety Commission does have statutory authority to compel production of the type of CBI which EPA receives pursuant to TSCA. Pursuant to Section 6(a)(8), the Commission is authorized to disclose confidential information to its employees. The Commission considers that contractors and subcontractors fall within the category of persons to whom such information may be furnished.

Accordingly, the Commission considers that it meets the criteria for disclosure to contractors and subcontractors set forth in 40 CFR 2.209(c)(5)(i). The Commission only rarely may find it necessary to disclose CBI to contractors and subcontractors—these occasions will be the exception. It has added a provision in the regulation stating that, prior to any disclosure to a contractor or subcontractor, the affected business will be notified.

3. Polaroid stated that, as proposed, the regulation could be interpreted as authorizing the establishment of a permanent storehouse of TSCA CBI with access to be granted at the discretion of Commission personnel for purposes other than those for which the Commission obtained it.

It is not the intention of the Commission to create such a "subsystem" (depository) of information. The Commission only obtains from EPA information that relates to consumer products that EPA believes the Commission needs to know about; this encompasses specific information relating to potential adverse human health effects. After it serves the specific purpose or purposes for which the Commission obtained it, the Commission will promptly return the information to EPA or destroy it. The Commission has revised the regulation to clarify this.

4. Polariod stated that the regulation, as proposed, authorizes "an unknown number of Commission employees" to have more or less general access to TSCA confidential business information. It recommended that the number be reduced to an absolute minimum.

The regulation has been revised to: limit access to the specific Commission and/or contract employees who have a need to know; provide that the Commission's security officer shall have access only for purposes of audit and investigations; provide that there shall be only one assistant to the Document Control Officer and that this assistant shall have access only when the Document Control Officer is unavailable and with the written approval of the Associate Executive Director for Health Sciences (AEDHS); and eliminate access by the (AEDHS) except as provided in § 1017.27. The result is that under normal circumstances only the Document Control Officer, Assistant Document Control Officer and specific Commission employees with a need to know will have acess to the data.

5. Polaroid stated that: (a) As proposed, the regulation (§ 1017.27) provided that access by an employee be granted unless the AEDHS determines that the employee does not have a legitimate need. The burden of proof should be reversed so that each employee requesting access should be required to demonstrate a legitimate need, and the decision to grant access should, at a minimum, be subject to EPA's concurrence.

The Commission has revised the regulation to reverse the burden of proof of need for access so that employees requesting access must demonstrate a legitimate need to know. However, the Commission does not agree that an individual's access to a document should be subject to EPA's concurrence. To require such approval could result in unacceptable delays and place EPA in the untenable position of having to keep apprised of which CPSC employees were working on various aspects of different projects, the status of access authorizations, personnel matters at CPSC and the relative importance of various CPSC projects, all of which fall within the responsibility of the Commission. Such concurrence was not contemplated by the Information Control Branch Management Support Division, EPA (now, Security Management Support Division), which reviewed and approved the procedures as set forth in the proposed regulation. It did not request or reserve the right to approve access by Commission employees.

Polaroid further stated that:

(a) As proposed, the security check requirement is subject to the proviso that it may be waived temporarily (except in the case of the security officer) where the employee has an "urgent need" for access. Polaroid states it is unclear whether the "urgency" contemplated relates to administrative convenience as well as the need to protect against imminent threats of harm to consumers' health. The regulation should be clarified to specify that it relates only to situations where there is a concern with immediate potential harm.

The Commission agrees and has revised the regulation accordingly.

In addition Polaroid stated that:

A provision should be added to require "remedial" actions in the case of employees who subsequently fail the security check. Polaroid suggests that at a minimum, such employees' access should be terminated immediately, all data in their possession should be reclaimed immediately and any affected business should be notified immediately.

The Commission has revised the regulation to provide that Commission and/or contract employees who do not meet the suitability guidelines of the Federal Personnel Manual, as unilaterally determined by the Commission, will have their access terminated immediately; all data in their possession shall be reclaimed immediately and in the event of a compromise of CBI any affected business shall be notified immediately.

6. Polaroid stated that the regulation, as proposed, did not provide for notification to affected businesses of actual or possible security breaches. Polaroid stated that because these are the parties most affected and they need to be able to act quickly to restrain possible misuse, it is imperative that they be notified immediately of any actual or suspected security breaches, "including inadvertent ones and the temporary misplacement or loss of documents" containing TSCA confidential business information. The regulation should be revised to require such notification at the earliest possible moment by the most expeditious means of communication.

The regulation has been revised to the extent that the affected company will be notified if the CPSC Executive Director determines that a document containing TSCA CBI is lost or otherwise unaccounted for, or if there is an actual or suspected security breach. The Commission believes this revision adequately assures that affected firms will be notified when appropriate.

7. Polaroid stated that a number of provisions in the regulation, as proposed, should be "tightened," as follows:

(a) The provisions of proposed § 1017.17 should be clarified to require that TSCA CBI be returned to the secure storage area when it is not in use during the day, rather than merely "covered" or "turned face down" as proposed. It would be preferable to require that it be used only in a secure room.

The Commission has revised the regulation to require that TSCA CBI be returned to the secure storage area when not in use during the day. The Commission is continuing to consider whether to require that confidential business information be viewed only in a secure room.

(b) Polaroid states that as proposed the regulation permits transfer of TSCA CBI by registered mail. In contrast, Polaroid points out that it sends its confidential PMNs (pre-manufacturing notifications) to EPA only by messenger with instructions to deliver the package directly to the appropriate document control officer and to notify Polaroid immediately of such delivery. Considering the enormous value of the information involved, Polaroid contends that at least the PMNs should be transferred by hand.

Procedures for transferring TSCA CBI by registered mail were modeled after EPA's own procedures (TSCA Security Manual, Chapter III, 3(d)). Therefore, the Commission considers transfer by registered mail to be appropriate.

The Commission, however, has revised the regulation to provide that, when feasible, documents containing TSCA CBI routinely shall be transmitted by personal delivery by a CPSC employee with instructions to deliver the materials directly to the appropriate document control officer at EPA and to obtain a written receipt of such delivery.

(c) In addition to requiring (in proposed § 1017.21) that newly created documents be numbered and logged, Polaroid states that the regulation should be clarified to require that all such documents be clearly and prominently marked as being confidential and subject to the requirements of TSCA, the Commission and the regulation. Polaroid also suggests that this section be clarified to require that the creation of such new documents be kept to an absolute minimum.

The Commission has revised the regulation to incorporate these suggestions.

(d) Proposed § 1017.32(a), according to Polaroid, should be amended to make it clear that its prohibition of computer storage or processing of "confidential business information obtained from EPA" applies both to the information and documents originally received from EPA *and* to all new confidential documents and data containing, based on, compiled from or otherwise derivative of such original information and documents. Polaroid states that a determination that such new information and documents is not TSCA CBI should be required pursuant to (proposed) § 1017.32(b), together with the concurrence of EPA. Polaroid also advises that computerization presents particularly difficult security problems, and special efforts should be made to ensure that the proposed section dealing with it is totally effective.

The Commission has revised the regulation to provide, only in Subpart H of 16 CFR Part 1017, procedures for handling confidential chemical products formula data received pursuant to the Commission's special order of August 21, 1975 and to eliminate from the other subparts all reference to that particular data. Subpart C provides that no TSCA CBI shall be computerized by the Commission and the regulation has been revised to prohibit the Commission, contractors, and subcontractors from computerizing confidential data based on, compiled from or otherwise derived from original CBI furnished by EPA.

The security procedures published below as 16 CFR Part 1017, Subparts B, C, D, E, F, and G are modeled after the procedures contained in the EPA's TSCA Security Manual. The procedures have been reviewed and approved by the Security Management Support Division, EPA, as meeting EPA requirements for sharing TSCA CBI with other agencies (See TSCA Security Manual, Chapter VI).

Certification of No Significant Economic Impact on Small Entities

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA, 5 U.S.C. 605(b) *seq.*)) the Commission hereby certifies that the rule set forth below will not have a significant economic impact on a substantial number of small entities because it does not impose any requirement or obligation on any person or firm subject to the Commission's jurisdiction. The rule issued below establishes internal Commission procedures to safeguard confidential business information obtained by the Commission from EPA.

Environmental Consideration

The amendments set forth below fall within the categories of Commission actions described in CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Effective Date

Because the rule issued below involves rules of agency practice only and does not impose any substantive requirements on the public, publication of the final rule at least 30 days before its effective date is not required by the APA at 5 U.S.C. 553(d). For this reason, the rule issued below shall become effective immediately.

List of Subjects in 16 CFR Part 1017

Business and industry, Chemicals, Confidential business information, Security measures.

Accordingly, under section 6(a) of the Consumer Product Safety Act (Pub. L. 92–573; 86 Stat. 1212–1215, as amended, Pub. L. 95–631, 92 Stat. 3742–45, Pub. L. 97–35, 95 Stat. 703, 752, 15 U.S.C. 2055(a)(2)), the Commission amends 16 CFR Part 1017 by redesignating Subpart B as Subpart H, 1017.50–1017.53; and adding new Subparts B, C, D, E, F and G.

PART 1017—PROCEDURES FOR SAFEGUARDING CONFIDENTIAL BUSINESS INFORMATION RECEIVED FROM EPA

Subpart A—[Reserved]

Subpart B—Purpose and Description of Information

Sec.

1017.1 Purpose and scope.
1017.2—1017.4 [Reserved]

Subpart C—Responsibilities

1017.5 Safeguarding confidential business information received from EPA; Associate Executive Director for Health Sciences responsibilities.
1017.6 Document Control Officer and Assistant responsibilities.
1017.7 Employee responsibilities.
1017.8 Security Officer responsibilities.
1017.9 Other individuals responsibilities; Chief Contracts Branch; Project Officer
1017.10—1017.14 [Reserved]

Subpart D—Procedures for Handling Confidential Business Information

1017.15 Document Control Officer procedures upon receiving information.
1017.16 Storage of confidential business information.
1017.17 Protection of confidential business information during use.
1017.18 Reproduction of confidential business information.
1017.19 Return of confidential business information to EPA or destruction.
1017.20 Discussion of confidential business information in meetings.
1017.21 Newly created documents containing confidential business information.
1017.22 Transfer of confidential business information.
1017.23 Lost or misplaced documents; violations of security by Commission employees.
1017.24–1017.26 [Reserved]

Subpart E—Procedures for Authorizing Access for Employees and for Employees To Obtain Access

1017.27 Request and approval for access to confidential business information.
1017.28 Investigations.

Sec.
1071.29 Employee access to information.
1017.30–1017.33 [Reserved]

Subpart F—Authorization for the Commission To Provide Access to Confidential Business Information to Members of the Chronic Hazard Advisory Panels

1017.34 Chronic Hazard Advisory Panels access to confidential business information.
1017.35 [Reserved]

Subpart G—Security Requirements for Contracts and Subcontractors

1017.35 Contractor and subcontractor access to confidential business information.
1017.36 Contracts and subcontracts involving access to confidential business information.
1017.37 Award of contracts and subcontracts involving confidential business information.
1017.38 Modifying existing contracts and subcontracts involving confidential business information.
1017.39 Contractor prohibition on computer use of confidential business information.
1017.40 Transfer of confidential business information to contractors and subcontractors.
1017.41 Inspection of contractor and subcontractor facilities.
1017.42 Return of information.
1017.43 Violations of security by contractors and subcontractors.

Subpart H—Chemical Formulations For Consumer Products

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Appendices

I. Confidentiality Agreement for employees.
II. Confidentiality Agreement for Employees Upon Termination or Transfer.
III. Request for Access to Confidential Business Information.
IV. Confidential Business Information User Sign-Out Log.
V. Confidential Business Information Document Control No. Form.
VI. Confidential Business Information Inventory Log.
VII. Confidential Business Information Record Disposition Log.
VIII. Security procedures for handling confidential business information provided to contractors or subcontractors.

Authority: Section 6(a)(2), Pub. L. 92–573, 86 Stat. 1212–1215; as amended Pub. L. 95–631, 92 Stat. 3742–45; Pub. L. 97–35, 95 Stat. 703, 752 (15 U.S.C. 2055(a)(2)).

Subpart A—[Reserved]

Subpart B—Purpose and Description of Information

§ 1017.1 Purpose and scope

This part sets forth the security measures that Consumer Product Safety Commission employees must follow to safeguard confidential business information (CBI) which the Environmental Protection Agency obtains pursuant to the Toxic Substances Control Act (TSCA) and furnishes to the Commission. This part also establishes security measures for Commission contractors and subcontractors obtaining access to this information. No such CBI shall be disclosed except as expressly authorized by Section 6 of the CPSA, as amended (15 U.S.C. 2055), and by this regulation.

§§ 1017.2–1017.4 [Reserved]

Subpart C—Responsibilities

§ 1017.5 Safeguarding Confidential Business Information Received From EPA; Associate Executive Director for Health Sciences Responsibilities.

(a) The Commission's Associate Executive Director for Health Sciences (AEDHS) has the primary responsibility for safeguarding CBI obtained by EPA pursuant to TSCA and furnished to the Commission.

(b) The AEDHS shall:

(1) Ensure that all CBI is handled under these procedures;

(2) Authorizes the use of storage room(s) for CBI and any reproduction of CBI, and approve the return to EPA or destruction of selected documents.

(3) Designate a Document Control Officer (DCO) and one Assistant Document Control Officer (DCOA) to serve under the direct supervision of the AEDHS to implement the procedures in this part;

(4) Provide authorization for Commission employees, contractors and subcontractors to have access to CBI in accordance with §§ 1017.15, 1017.27 and 1017.35.

(5) Ensure that no CBI or confidential data based on, compiled from or otherwise derived from original CBI furnished by EPA, is computerized.

(6) Initiate appropriate action when any employee contractor or subcontractor fails to comply with these procedures, e.g., disciplinary action against such employee or termination of a contract or subcontract.

(7) The AEDHS shall immediately notify the Executive Director and General Counsel of any investigation by the Security Officer that covers the suspected or actual compromise of CBI, a violation of or apparent violation of the security provisions of this part, including the unauthorized disclosure of CBI.

(8) The AEDHS will have acess to CBI only to the extent to fullfill the specific responsibilities set forth above and elsewhere in this regulation and to carry out his responsibilities as AED as provided in §1017.27 of this regulation.

§ 1017.6 Document Control Officer and Assistant responsibilities.

(a) The Document Control Officer (DCO) is responsible for the following:

(1) Maintaining a current list of Commission personnel, contractors and subcontractors who are authorized to have access to CBI, including any limitations on access;

(2) Maintaining document control records for all CBI, both incoming and outgoing;

(3) Assigning document control numbers to all documents containing CBI;

(4) Releasing CBI only to authorized employees;

(5) Ensuring that CBI when not in use is stored in accordance with these procedures.

(6) Changing the room lock and storage container combinations in accordance with § 1017.16(e).

(7) Maintaining a system for retrieval of documents;

(8) Supervising the reproduction, and destruction or return of CBI to EPA.

(9) Conducting with the security officer periodic, but not less than annual, inventory checks of documents containing CBI and furnishing the results to the AEDHS; such inventory checks also will occur whenever there is a change of the AEDHS, DCO, Document Control Officer's Assistant (DCOA) or Security Officer, a suspected breach of security, or when a Commission or contract employee who receives an unfavorable suitability determination by the Commission as set forth in § 1017.28.

(10) Immediately reporting any violation of these procedures to the AEDHS.

(11) Conducting routine training on good security procedures for employees accessing CBI.

(b) The DCOA designated by the AEDHS is responsible for performing the duties assigned by the DCO and acting for the DCO in routine matters only in the absence of the DCO and only after written approval has been obtained from the AEDHS.

§ 1017.7 Employee responsibilities.

(a) Commission and/or contract employees who are authorized access to CBI are responsible for the following:

(1) Controlling and safeguarding all CBI they receive. This will be done in accordance with these procedures, any additional Commission security procedures which may be implemented in the future and common sense. Employees must sign the appropriate appended Confidentiality Agreement and meet the suitability/investigative

requirements set forth in 1017.28 before they are granted access to CBI;

(2) Discussing CBI only with authorized persons who need to know;

(3) Safeguarding CBI when it is in actual use;

(4) Immediately reporting possible violations of these procedures to the DCO;

(5) Not reproducing CBI except with the approval of the AEDHS and under the supervision of the DCO;

(6) Not discussing CBI over the telephone;

(7) Returning CBI to the DCO when not in use and at the close of business each day for safeguarding in accordance with these procedures.

§ 1017.8 Security Officer responsibilities.

(a) The Executive Director shall appoint a Security Officer.

(b) The Security Officer shall be responsible for the following:

(1) Ensuring that appropriate investigations required in 1017.28 are conducted for the AEDHS, the DCO, DCOA and also for employees to whom access to CBI is provided in accordance with these procedures;

(2) Maintaining a file of signed Confidentiality Agreements (Appendix I) which must be executed by all employees who are granted access to CBI;

(3) Conducting periodic physical security surveys to ensure compliance with these procedures;

(4) Investigating any alleged or suspected wrongful disclosure of CBI and furnishing the results of the investigation to the DCO, AEDHS, and the Associate Executive Director for Administration (AEDAD) for any appropriate action.

(5) Investigating any alleged or suspected violation of these procedures by an employee and furnishing the results to the DCO, AEDHS, and AEDAD for any appropriate action;

(6) Investigating any alleged or suspected violations of contract or subcontract security procedures and reporting the results to the DCO and AEDHS for any appropriate action.

(7) Administering, witnessing, and maintaining the Confidentiality Agreement for CPSC Employee Upon Termination or Transfer (Appendix II) for each employee who has had access to CBI and is transferring from or terminating his/her employment with the Commission;

(8) Accompany personnel from EPA Security Management Support Division to conduct periodic inspection of contractor or subcontractor facilities to determine compliance with required security procedures.

(c) The Security Officer will have access to CBI only to the extent necessary to fulfill the responsibilities set forth above.

§ 1017.9 Other individuals' responsibilities; Chief, Contracts Branch; Project Officer.

(a) The Chief of the Contracts Branch of the Directorate for Administration is responsible for the following:

(1) Ensuring that the clause entitled "Security Procedures for Handling Confidential Business Information Provided to Contractors and Subcontractors (Appendix VIII) is included in any Request for Proposals, contract, or subcontract where the contractor or subcontractor will have access to CBI obtained from EPA pursuant to TSCA.

(2) Reporting any alleged or suspected violations of the contract or subcontract security provisions to the Security Officer.

(b) The Project Officer for a contract, who has been approved for access to CBI in accordance with § 1017.27, is responsible for obtaining from the DCO and securely transferring CBI to a contractor/subcontractor and ensuring that all the information is returned to the DCO at the completion of the contract work. Prior to transferring CBI to a contractor/subcontractor the Project Officer for a contract is responsible for notifying the affected business at least ten days in advance of the transfer.

§§ 1017.10—1017.14 [Reserved]

Subpart D—Procedures for Handling Confidential Business Information

§ 1017.15 Document Control Officer procedures upon receiving information.

(a) Upon receipt of documents containing CBI, the DCO shall:

(1) Assign a document control number to each document;

(2) Attach a Confidential Business Information cover sheet to the information (Appendix V); and

(3) Enter the required information into the Inventory Log (Appendix VI) including a description of the document, date received, and name of submitter.

§ 1017.16 Storage of confidential business information.

(a) When CBI is not in use and at the close of business each day, the DCO, at a minimum, must store the CBI within a metal cabinet with a bar and a three-way changeable combination padlock approved by the Security Officer.

(b) The metal cabinet or other approved security container must be located in a room(s) that the AEHDS has authorized and which is approved, before use, by the Security Officer and by the EPA.

(c) The room(s) must have doors with a simplex combination or similarly-rated lock and one or more of the following, depending upon the location, construction, and configuration of the room:

(1) Contact alarmed doors/windows;

(2) Ultrasonic alarm;

(3) Vibration alarms; or

(4) Other remote intrusion alarms.

(d) Only the DCO and DCOA are authorized to be given the combinations to the room(s) and to the storage container(s).

(e) The room lock and the storage container combinations must be changed by the DCO at least once each year and every time an employee having access to the storage containers terminates employment, transfers to responsibilities that do not allow access, has breached security, or who has had his/her access authorization terminated.

§ 1017.17 Protection of confidential business information during use.

(a) Except as provided in paragraph (b) of this section, CBI, when in actual use by an authorized person, shall be protected as follows:

(1) Kept under the constant surveillance of an authorized person who is in a physical position to exercise direct security control over the material;

(2) Covered, turn face down, placed in storage containers, or otherwise protected when unauthorized persons are also present; and, when the material is not in use it shall be returned to the secure storage area.

(3) Discussed only with other authorized persons; and

(4) Returned to the DCO not later than close of business each day.

(b) In instances where CBI is to be given to a contractor or subcontractor, the information shall be handled in the same manner as described in paragraph (a) of this section except that it shall be returned at the close of business each day to the person designated by the contractor or subcontractor to safeguard CBI.

1017.18 Reproduction of confidential business information.

The reproduction of CBI should be kept to an absolute minimum. Reproduction of CBI may be done only with the approval of the AEDHS and under the supervision of the DCO. The DCO shall enter all copies into the document control system (Inventory Log, Appendix VI), notify the AEDHS, and apply the same control requirements as for the original.

§ 1017.19 Return of confidential business information to EPA or destruction.

(a) Documents containing CBI will either be returned to EPA promptly when the information has served the purpose or purposes for which it was obtained or will be destroyed.

(b) Whenever possible and feasible, documents shall be returned to EPA by personal delivery by authorized Commission personnel in accordance with the procedures set forth in § 1017.22 (a) and (b) of this regulation.

(c) If the information is to be returned by mail, it must be transmitted in accordance with the procedures set forth in § 1017.22(c) of this regulation.

(d) In instances where it is not possible or feasible to return documents to EPA, the documents shall be destroyed by shredding or burning under the supervision of the DCO and in the presence of a witness.

(e) The DCO shall record the return/destruction on the Inventory Log (Appendix VI) and the Record Disposition Log (Appendix VII) in the presence of the employee returning CBI. The DCO shall maintain the Inventory Log and a copy of the User Sign-Out Log (Appendix IV) for all materials returned/destroyed for a period of at least five years.

§ 1017.20 Discussion of confidential business information in meetings.

(a) In any meeting, symposium, panel discussion, or seminar in which CBI will be discussed by Commission employees, the meeting chairman shall:

(1) Be a person authorized to have access to CBI;

(2) Ensure that only persons authorized to have access to CBI are present when such information is to be discussed;

(3) Provide a sign-in sheet, including the date, time, place, subject of the meeting, and type CBI discussed and require all attendees to sign it. The meeting chairperson shall give the sign-in sheet to the DCO who will retain it for at least one year.

(4) Review with the attendees their responsibility for safeguarding CBI.

(5) Ensure that no electronic recording is made of the meeting unless the AEDHS has authorized it. If authorized, the recording must be treated as all other CBI and the DCO must enter it into the document control system;

(6) Ensure that the meeting room is secured after the meeting. This shall include erasing all blackboards, destroying all tear sheets and other notes, and ensuring that nothing is left in the room which would lead to an unauthorized disclosure of CBI.

§ 1017.21 Newly created documents containing confidential business information.

Creation of new documents by extracting information from documents containing CBI should be kept to an absolute minimum. When a new document is created by extracting information from documents containing CBI, the newly created document shall be brought to the attention of the DCO by the close of business on the day it is created. The DCO shall follow the procedures in this subpart of numbering and logging the new documents. The new document should be clearly and prominently marked as being confidential and subject to the requirements of Section 6 of the CPSA and of this regulation. Notes containing CBI taken from a document or at a meeting shall likewise be brought to the attention of the DCO for numbering, logging and marking confidential and subject to Section 6 of the CPSA and this regulation on the day they are created.

§ 1017.22 Transfer of confidential business information.

(a) CBI routinely will be transferred between geographic locations by authorized CPSC personnel, provided that the DCO maintains a record and obtains a receipt from the person receiving the information. When hand-delivery is not feasible, the information will be transmitted by registered mail. In no instance will the information be transmitted by regular or certified mail.

(b) The information to be transmitted by hand must be in a double envelope. The inner envelope must reflect the name and address of the recipient, with the following wording on the front side: "Confidential Business Information—To Be Opened By Addressee Only." The outer envelope must reflect the normal address, without the additional wording, and be marked "BY HAND."

(c) If the information cannot reasonably be delivered by hand and thus is to be transmitted by mail, the DCO must send it by registered mail, return receipt requested, in a double envelope. The inner envelope must reflect the name and address of the recipient with the following wording on the front side of the inner envelope: "Confidential Business Information—To Be Opened By Addressee Only." The outer envelope must reflect the normal address without the additional wording.

§ 1017.23 Lost or misplaced documents; violations of security by Commission employees.

(a) If any employee becomes aware that a document containing CBI is lost or otherwise unaccounted for, he/she shall immediately notify the DCO. If the document is not located within eight working hours, the DCO shall refer the matter to the Security Officer and the AEDHS for processing in accordance with paragraphs (b) through (e) of this section.

(b) If an employee intentionally or unintentionally violates or apparently violates the security provisions of this Part the Security Officer shall investigate the violations or apparent violations, and report the matter to the DCO and the AEDHS. The AEDHS shall immediately notify the Executive Director and the General Counsel.

(c) If the investigation by the Security Officer uncovers a violation of the security requirements of this part and there is no evidence of any unauthorized disclosure, the Security Officer shall inform the DCO and the AEDHS.

(d) If the investigation by the Security Officer uncovers the probable unauthorized disclosure of CBI, the Security Officer immediately shall inform the DCO and the AEDHS. The AEDHS shall immediately notify the Executive Director and the General Counsel.

(e) If the Executive Director determines that there is a suspected or actual unauthorized compromise of CBI, he/she shall immediately notify the Chief, Security Management Support Division, EPA, and the affected business.

(f) If the investigation by the Security Officer uncovers information reflecting a possible criminal violation, the Security Officer will immediately inform the AEDHS and DCO. The AEDHS shall immediately inform the Executive Director, and the General Counsel. If there is evidence of a criminal violation, the General Counsel shall refer the matter to the Department of Justice pursuant to 28 U.S.C. 535.

§§ 1017.24–1017.26 [Reserved]

Subpart E—Procedures for Authorizing Access for Employees and for Employees To Obtain Access

§ 1017.27 Request and approval for access to confidential business information.

(a) The Commissioners, the Executive Director, Deputy Executive Director, Associate Executive Directors, General Counsel and Office Directors have authority to request access to CBI for themselves or employees under their supervision. A request must be made to the AEDHS by completing Part 1 of the document "Request for Access to Selected Confidential Business

Information." (Appendix III). The request must be accompanied by a Confidentiality Agreement (Appendix I) signed by the employee for whom access is requested.

(b) The AEDHS shall approve the request for access by completing Part 2 of the request form (Appendix III) if the person requesting access can demonstrate a legitimate need to have access to CBI. If the AEHDS approves the request for access, the AEDHS shall send the completed form to the Security Officer who will be responsible for ensuring that an appropriate security investigation has been conducted, as described in § 1017.28.

(c) If the AEDHS determines that an employee has not demonstrated a legitimate need to have access to CBI, the employee will not be granted access. This decision may be appealed to the CPSC Executive Director with a copy of the appeal being sent to the General Counsel. If the Executive Director upholds the decision of the AEDHS, the denial of access may be appealed to the Chairman with a copy of the appeal being sent to the General Counsel.

§ 1017.28 Investigations.

(a) All employees must have a National Agency Check and Inquiries (NACI) completed before being given access to CBI unless a temporary waiver is obtained in accordance with paragraph (b) of this section. The Security Officer, upon receipt of completed Parts 1 and 2 of a request form for employee access to CBI (Appendix III), will contact the Personnel Office and obtain in writing the fact that an NACI has been completed with a favorable suitability determination. The Security Officer will then complete Part 3 of the request form (Appendix III) to authorize the employee to have access to CBI. The Security Officer shall then notify the employee, the AEDHS and the DCO who will place the employee's name on the authorized access list.

(b) If a NACI investigation has not been completed for an employee and there is an urgent need for the employee to have access to CBI in order to protect against immediate potential harm to consumers' health, the Director of Personnel or his/her designated representative may grant a temporary waiver. A temporary waiver may be granted only after review of official personnel documentation consistent with the suitability criteria contained in chapter 731 of the Federal Personnel Manual. If the Director of Personnel or designated representative makes a favorable suitability determination after such a review he/she shall notify the DCO and the Executive Director and General Counsel of the temporary waiver in writing and authorize the DCO to place the employee's name on the authorized access list. If derogatory information later identified in the NACI causes the Commission to reevaluate the employee's suitability with an unfavorable determination, his/her access to CBI shall be immediately terminated, all data in his/her possession shall be immediately reclaimed and the procedures set forth in § 1017.23(b) followed, as appropriate.

(c) The DCO and DCOA, because of their positions, must have a background investigation with a favorable suitability determination completed before assuming their responsibilities under this Part except as provided in paragraph (d) of this section. The Personnel Office will verify to the Security Officer and the AEDHS that a background investigation of the responsible officials has been conducted and that there is nothing of record to preclude them from having access to CBI or from assuming their responsibilities under this Part.

(d) The Director of Personnel or his/her designated representative may temporarily waive the requirement for a background investigation for the DCO and DCOA when there is an urgent need for the person to assume his/her duties to protect against immediate potential harm to consumers' health. The Director of Personnel or his/her designated representative will notify the person in writing that he/she may assume responsibilities immediately, provided (1) that an NACI investigation has been completed and there is nothing of record to preclude the person from assuming responsibilities, and (2) that the employee, at that time, applies for a background investigation. If the Director of Personnel or his/her designated representative temporarily waives the requirement for a background investigation he/she must immediately notify the Executive Director and General Counsel in writing. If an unfavorable suitability determination is later made, based on the results of the background investigation, his/her access to confidential business information shall be immediately terminated, all data in his/her possession shall be immediately reclaimed and the procedures set forth in § 1017.23 (b) through (e) followed, as appropriate.

§ 1017.29 Employee access to information.

(a) To obtain access to CBI, an employee who is authorized to have access to CBI in accordance with this regulation must complete a "Request For Access to Confidential Business Information" (Appendix III), obtain all necessary additional signatures, and present the completed form to the DCO.

(1) The DCO must verify that the requester is on the authorized access list;

(2) The DCO will retrieve the document from storage and give it to the authorized employee;

(3) The authorized employee must return the document to the DCO as soon as he/she has finished using it but not later than by close of business the day that it was accessed;

(4) The DCO will enter the appropriate information in the User Sign-out Log (Appendix IV);

(5) The DCO will assure that each document has a control number and CPSC Confidential Business Information cover sheet (Appendix V) before releasing the document, as required by Subpart E below.

(b) If a document is not returned to the DCO by the end of the day accessed, if not sooner, the DCO will immediately attempt to retrieve the document and notify the AEDHS and the Security Officer who will investigate the matter.

§§ 1017.30–1017.33 [Reserved].

Subpart F—Authorization for the Commission To Provide Access to Confidential Business Information to Members of the Chronic Hazard Advisory Panels

§ 1017.34 Chronic Hazard Advisory Panels Access to confidential business information.

(a) The Commission is authorized to provide access to CBI to members of the Chronic Hazard Advisory Panels (CHSPA), established pursuant to Section 28 of the CPSA, as amended in 1981, 15 U.S.C. 2077.

(b) The CBI will be furnished to CHAP members under all of the safeguards relating to Commission employees provided in Subparts B through E herein.

(c) Members of CHAP who obtain access to CBI are subject to all of the provisions of Subpart G herein relating to Commission contractors and subcontractors.

Subpart G—Security Requirements for Contractors and Subcontractors

§ 1017.35 Contractor and subcontractor access to confidential business information.

(a) Contractors and subcontractors are responsible for maintaining the confidentiality of CBI to which they are

given access under the terms of a contract.

(b) CBI may be furnished to Commission contractors and subcontractors only when it is necessary for the performace of work specified in the contract or subcontract, when the contract or subcontract contains the required clauses, when the contractor or subcontractor and their employees sign confidentiality agreements, and when the procedures in this Subpart have been followed. The affected business will be notified at least ten days in advance of disclosure of CBI to contractors or subcontractors.

§ 1017.36 Contracts and subcontracts involving access to confidential business information.

(a) When a Commission office initiates a Request for Proposals for a contract and the contractor or subcontractor will need access to CBI to perform the work, the CPSC Project Officer responsible for the contract must request approval for such access from the AEDHS prior to initiatng a Request for Proposals. The AEDHS shall approve or disapprove the request in writing based upon a determination of whether the contractor/subcontractor would require access to perform the contract and shall notify the person making the request of the decision.

(b) If the AEDHS determines that a contractor or subcontractor does not have a legitimate need to have access to data, this decision may be appealed to the Executive Director. If the Executive Director upholds the decision of the AEDHS, the denial of access may be appealed to the Chairman. Throughout this appeal process the General Counsel will be kept apprised.

(c) After the AEDHS has approved a request for contractor or subcontractor access, the office requesting the access shall notify the Contracts Branch that the Request for Proposals and resulting contract must include the contract provision set forth in Appendix VIII, "Security Procedures for Handling Confidential Business Information Provided to Contractors and Subcontractors" and that contract employees who require access to Confidential Business Information must meet the same suitability investigative requirements as Federal employees as set forth in § 1017.28.

§ 1017.37 Award of contracts and subcontracts involving confidential business information.

In evaluating the proposals submitted by offerors responding to the Request for Proposals, the Contracts Branch and the requesting office shall consider any potential conflicts of interest that might preclude the handling of CBI by the successful offeror. They shall also consider the offeror's past performance on similar contracts or subcontracts involving the handling of CBI or other information of confidential and/or a sensitive nature, such as national defense information or privacy information.

§ 1017.38 Modifying existing contracts and subcontracts involving confidential business information.

When a contract or subcontract is already in effect and a Commission office determines that it will be necessary to furnish CBI to a contractor or subcontractor to perform the work required, the procedures set forth in §§ 1017.25, 1017.36 and 1017.37 will be followed. The contract or subcontract shall be modified to include the provisions set forth in Appendix VIII.

§ 1017.39 Contractor prohibition on computer use of confidential business information.

(a) CBI or confidential data based on, compiled from or otherwise derived from original CBI furnished by EPA may not be computerized by a contractor or subcontractor.

§ 1017.40 Transfer of confidential business information to contractors and subcontractors.

(a) The project officer responsible for the contract or subcontract shall request the required CBI from the DCO. The request shall include the identity of the contractor or subcontractor, the number of the contract or subcontract, a statement that the appropriate clauses are included in the contract or subcontract and that the contractor and subcontractor employees having access to the information have signed a nondisclosure statement. A copy of the approval given by the AEDHS should also be attached.

(b) Upon receipt of a request, the DCO shall provide the requested information to the Project Officer who shall deliver the information to the contractor or subcontractor in person, if feasible. The Project Officer shall obtain a written receipt for the information from the contractor or subcontractor and send it to the DCO.

(c) The information will routinely be transferred to the contractor or subcontractor by personal delivery by authorized CPSC personnel, provided that the DCO maintains a record and obtains a receipt from the person receiving the information. When hand-delivery is not feasible, the information will be transmitted by registered mail. In no instance will the information be transmitted by regular or certified mail.

(d) When the information is to be transmitted by personal delivery, the procedures set forth in § 1017.22 (a) and (b) of this regulation must be followed. If the information is to be transmitted by registered mail, the procedures set forth in § 1017.22(c) of this regulation must be followed.

§ 1017.41 Inspection of contractor and subcontractor facilities.

(a) Before the award or modification of a contract, the Contracts Office shall request the EPA Security Management Support Division to verify and certify in writing that a contractor or subcontractor has in place adequate facilities, safeguards and procedures to insure the security of CBI.

(b) Until CPSC receives EPA approval it shall not furnish to any contractor or subcontractor any CBI it has received from EPA.

(c) The Contracts Office may periodically request the Security Officer to conduct unannounced security inspections to assure that the contractor or subcontractor is taking the necessary steps to protect the CBI. A copy of the Security Officer's report shall immediately be sent to the Chief, Security Management Support Division, EPA.

§ 1017.42 Return of information.

Upon completion of the contract or subcontract, the Project Officer responsible for the contract or subcontract shall obtain from the contractor or subcontractor all copies of CBI previously provided to the contractor or subcontractor and shall send them to the DCO under the procedures set forth in § 1017.41(c).

§ 1017.43 Violations of security by contractors and subcontractors

(a) If a contractor or subcontractor violates or is suspected of violating the security terms of a contract or subcontract obligating it to protect CBI the Security Officer shall investigate the violations or apparent violations, and report the matter to the DCO, AEDHS and the General Counsel.

(b) If the investigation by the Security Officer uncovers a violation of the security requirements of the contract and there is no evidence of any unauthorized disclosure, the Security Officer shall inform the DCO, AEDHS and the Contracting Officer who shall take appropriate action under the terms of the contract or subcontract. The AEDHS shall immediately notify the Executive Director and the General Counsel.

(c) If the investigation by the Security Officer uncovers the suspected or actual compromise of CBI, the Project Officer immediately will retrieve all CBI and return it to the DCO. The Security Officer shall immediately inform the DCO and AEDHS. The AEDHS shall immediately notify the Executive Director and the General Counsel. If in the judgment of the Executive Director there is a suspected or actual compromise of CBI, he shall immediately notify the Chief, Security Management Support Division, EPA and the affected business. Appropriate action under the terms of the contract or subcontract shall be taken. This action may include terminating the contract or subcontract, without penalty to CPSC.

(d) If the investigation by the Security Officer uncovers information reflecting a possible criminal violation, the Security Officer will immediately inform the DCO and AEDHS. The AEDHS shall immediately notify the Executive Director and the General Counsel. If there is evidence of a criminal violation, the General Counsel shall refer the case to the Department of Justice pursuant to 15 U.S.C. 2613(d)(2).

Subpart H—Chemical Formulations for Consumer Products

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Appendix I.—Confidentiality Agreement for Consumer Product Safety Commission Employees

I understand that I will have access to certain Confidential Business Information (CBI). This access has been granted in accordance with my official duties as an employee of the Consumer Product Safety Commission.

I understand that CBI may not be disclosed to other employees or persons, except as authorized in accordance with the CPSC Security Regulation (16 CFR Part 1017 Subparts B, C, D, E, F and G). I understand that the unauthorized disclosure of this information may subject me to civil and criminal penalties. In addition, I understand that I may be subject to disciplinary action for violation of this agreement with penalities ranging up to and including dismissal.

I have read and understand the CPSC Security Regulation. I agree that I will treat any CBI furnished to me as confidential and that I will follow the procedures set forth in the CPSC Security Regulation. I also agree that I will not remove any CBI from the premises of CPSC and that I will return all copies of any CBI in my possession to the Document Control Officer when I am finished with their use but not later than the end of the day accessed. I further agree that I will not disclose any CBI to any person after termination of employment with CPSC.

I am aware that I may be subject to criminal penalties under 18 U.S.C. 1001 if I have made any statement of material facts knowing that such a statement is false or if I willfully conceal any material fact.

Signature

Date

Name

CPSC Employee Number

Appendix II—Confidentiality Agreement for Consumer Product Safety Commission Employees Upon Termination or Transfer

In accordance with my official duties an an employee of the Consumer Product Safety Commission, I have had access to CBI. I understand that CBI information may not be disclosed to other employees or persons except as authorized by the CPSC Security Regulation (16 CFR Part 1017 Subparts B, C, D, E, F, and G).

I certify that I have returned all copies of *any* CBI information in my possession to the document control officer as required by the CPSC Security Regulation.

I agree that I will not remove any copies of CBI from the premises of other Agency upon my termination or transfer. I further agree that I will not disclose any CBI to *any* person after my termination or transfer.

I understand that as an employee of the United States who has had access to CBI I am liable to civil and criminal penalties for unauthorized disclosure.

If I am still employed by the United States, I also understand that I may be subject to disciplinary action for violation of this agreement.

I am aware that I may be subject to criminal penalties under 18 U.S.C. 1001 if I have made any statement of material facts knowing that such a statement is false or if I willfully conceal any material fact.

Signature

Date

Name

CPSC Employee Number

Appendix III—Request for Access to Confidential Business Information

1. The following named employee will require access to Confidential Business Information (CBI) in the performance of official duties.

Full Name

CPSC Employee Number

Position

Office

Date Required

Justification

Please authorize access, for the above named employee, to CBI. Attached is a copy of the Confidentiality Agreement signed by the employee.

Signature of Designating Official

Date

Title

Office

2. *Associate Executive Director for Health Sciences.*

The authorization for the above named individual has been:

( ) Approved for access contingent upon verification by the Security Officer that a satisfactory investigation has been conducted. Access is limited to the information specified.

( ) Disapproved—Operational need for access has not been demonstrated.

Signature

Date

3. *Security Officer.*

( ) A National Agency Check and Inquiries (NACI) investigation has been conducted on the above-named individual. The individual meets the investigative requirement and nothing is of record to preclude access to CBI.

Signature

Date

( ) A temporary waiver from the NACI investigation has been granted by the Association Executive Director for Health Sciences and the individual approved for immediate access to CBI.

Signature

Date

BILLING CODE 6355-01-M

APPENDIX IV.
CONFIDENTIAL BUSINESS INFORMATION
USER SIGN-OUT LOG

Control/ Copy Number	Document Description	SIGN OUT				SIGN IN		
		Checked out Date/Time	Employee Number	Name (Print)	Signature	DCO Initials	Returned Date/Time	DCO Initials

Appendix V.

CONFIDENTIAL BUSINESS INFORMATION

Document Control No. Form _____ Date Received _____
for Confidential Business Information

Document Control Officer _____

The attached document contains Confidential Business Information. This information may not be disclosed or copied except as authorized in the procedures set forth in the CPSC Security Regulation on Confidential Business Information (16 CFR Part 1017). The unauthorized disclosure of Confidential Business Information may subject an individual to civil and criminal penalties.

Only persons approved by the Associate Executive Director for Health Sciences may be given access to this document.

Each person who is given access to this document must fill in the information below.

Name	Signature	CPSC ID No.	Date/Time Out	Date/Time In	DCO Initial

DO NOT DETACH

APPENDIX VI.

CONFIDENTIAL BUSINESS INFORMATION

INVENTORY LOG

DATE RECEIVED	SOURCE OF INFORMATION	CONTROL/ COPY NUMBER	No. PAGES	DOCUMENT DESCRIPTION	DCO INITIAL
	Name Address City State Zip				
	Name Address City State Zip				
	Name Address City State Zip				

APPENDIX VII.

SELECTED CONFIDENTIAL INFORMATION

RECORD DISPOSITION LOG

CONTROL/ COPY NUMBER	DISPOSITION	DATE	IF DESTROYED, BY WHOM?	METHOD OF DESTRUCTION	DESTRUCTION WITNESSED BY	IF RETURNED, METHOD OF RETURN
	☐ Returned to Source ☐ Destroyed		Name CPSC ID Number			
	☐ Returned to Source ☐ Destroyed		Name CPSC ID Number			
	☐ Returned to Source ☐ Destroyed		Name CPSC ID Number			
	☐ Returned to Source ☐ Destroyed		Name CPSC ID Number			

BILLING CODE 6355-01-C

Appendix VIII—Security Procedures for Handling Confidential Business Information Provided to Contractors or Subcontractors

A. The Project Officer may disclose to the Contractor confidential business information (CBI) necessary to carry out the work required under this Contract. The Contractor agrees to use the CBI only under the following conditions.

1. The Contractor and Contractor's employees shall (i) use CBI only for the purposes of carrying out the work required by the Contract; (ii) not disclose the information to anyone other than CPSC employees authorized to have access to CBI without prior written CPSC approval, (iii) return to the Project Officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Project Officer; whenever the information is no longer required by the Contractor for the performance of the work required by the Contract; or upon completion of the Contract; and (iv) comply with the CPSC Security Regulation (16 CFR Part 1017) in handling and storing CBI.

2. The Contractor shall obtain a written agreement to comply with the above limitations from each of the Contractor's employees who will have access to the information, before the employee is allowed access. A copy of each agreement shall be furnished to the Project Officer.

B. The Contractor shall not use any CBI supplied by CPSC or obtained during performance hereunder to compete with any business to which the CBI information relates, or in any other manner except as authorized by the contract. Unauthorized use or disclosure of CBI may result in termination of the Contract for default and may subject the Contractor and Contractor's employees to civil and criminal penalties.

C. The Contractor shall not computerize any CBI obtained by the CPSC from the Environmental Protection Agency under TSCA and furnished by CPSC to the Contractor.

D. The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both CPSC and any affected business having a proprietary interest in the information.

E. The Contractor agrees to obtain the written consent of the Commission's Contracting Officer and the Acting Executive Director for Health Sciences prior to entering into any subcontract that will involve the disclosure of CBI by the contractor to a subcontractor. The Contractor also agrees to include this clause, including this subparagraph, in each subcontract where CBI will be furnished to the subcontractor.

F. The Contractor shall, upon request of the CPSC Contracting Officer, permit the Contracting Officer or other Commission personnel access to and inspection of the Contractor's facilities for the purpose of ascertaining the Contractor's compliance with this clause.

Effective Date. This rule shall be effective November 2, 1983.

(Sec. 6(a) of the Consumer Product Safety Act (Pub. L. 92-573; 86 Stat. 1212-1251, as amended, Pub. L. 95-631, 92 Stat. 3742-45, Pub. L. 97-35, 95 Stat., 703, 752, 15 U.S.C. 2055(a)(2))

Dated: October 17, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-28572 Filed 11-1-83; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA-888; File No. S7-984]

Rescission of a Rule Excluding From Registration as Investment Advisers Certain Persons Who Offer Investment Advice to Employee Benefit Plans Sponsored By Their Employers

AGENCY: Securities and Exchange Commission.

ACTION: Rescission of a rule.

SUMMARY: The Commission is rescinding a rule under the Investment Advisers Act of 1940 which generally prohibits persons serving as in-house investment managers of certain employee benefit plans from registering as investment advisers. The Commission has determined that the rule is no longer necessary or appropriate in the public interest. Rescission of the rule will mean that persons described in the rule will no longer be excluded from the definition of investment adviser under the Act.

EFFECTIVE DATE: December 2, 1983.

FOR FURTHER INFORMATION CONTACT: Forrest R. Foss, Esq., (202) 272-2079, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 5-2, Washington, D.C. 20549. After the effective date, questions should be directed to the Office of Chief Counsel, (202) 272-2030, Division of Investment Management, 450 Fifth Street, N.W., Stop 5-2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On July 14, 1983, the Commission proposed for public comment[1] the recission of rule 202-1 [17 CFR 275.202-1] under the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. 80b-1 *et seq.*]. Rule 202-1 under the Advisers Act excludes from the definition of an investment adviser certain persons who offer investment advice to employee benefit plans (as defined under the Employee Retirement Income Security Act of 1974 (ERISA)) sponsored by their employers. The effect of rule 202-1 is to prohibit those in-house investment managers of employee benefit plans described in the rule from registering with the Commission as investment advisers. As discussed in detail in Investment Advisers Act Release No. 870 (Release No. 870), the Commission's proposal to rescind rule 202-1 was based on its conclusion that the rule no longer is necessary or appropriate in the public interest.

In response to its request for comment on the proposed rescission of rule 202-1, the Commission received only one comment letter. This comment supported the Commission's action as proposed. Accordingly, based on its consideration of this comment and the lack of objection to the proposal, and for the reasons stated in Release No. 870, the Commission is rescinding rule 202-1 under the Advisers Act.

List of Subjects in 17 CFR Part 275

Investment Advisers, Reporting and recordkeeping requirements, Securities.

Commission Action

The Commission hereby amends Part 275 of Chapter II Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 by removing § 275.202-1.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

§ 275.202-1 [Removed]

Statutory Authority

The Commission is rescinding rule 202-1 pursuant to the authority contained in section 211(a) of the

[1] Investment Advisers Act Release No. 870, July 15, 1983 [48 FR 33312, July 21, 1983].

Advisers Act [15 U.S.C. 80b–11(a)]. By the Commission.

George A. Fitzsimmons,

Secretary.

October 26, 1983.

[FR Doc. 83-29768 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 621, 653, 654, 655, and 656

Cost Reimbursable Agreements; Applicable Regulations Pursuant to the Wagner-Peyser Act, as Amended

AGENCY: Employment and Training Administration, Labor.

ACTION: Rule-related notice.

SUMMARY: This notice describes the applicable regulations relating to cost reimbursable agreements negotiated with States by the Department of Labor, pursuant to Section 7(c) of the Wagner-Peyser Act, as amended. Cost reimbursable agreements were negotiated with States during the planning phase preceding the start of the new fiscal year on October 1, 1983. Therefore, effective October 1, 1983, and each subsequent year, the regulations applicable to the particular activities to be carried out by States through cost reimbursable agreements are listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Gilliland, Director, United States Employment Service, 601 D Street NW., Room 8000, Washington, D.C. 20213, Telephone (202) 376–6289 or the appropriate Employment and Training Administration Regional Office.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, Department of Labor, through a Notice in the **Federal Register**, on June 22, 1983 (48 FR 28575), announced the availability of funds for selected activities (Labor Certification; Housing Inspections; Employment, Wages, and Contributions Report (ES–202); and the Targeted Jobs Tax Credit Program). The Notice also stated that these funds would be awarded to States through a reimbursable grant.

On July 25, 1983, at 48 FR 33832, the Department published proposed regulations governing the establishment and functioning of State Employment Services administered under the Wagner-Peyser Act, as amended. At that time, the Department indicated that a separate Notice would be published announcing the applicable regulations for the certification of permanent and temporary foreign labor, for the provision of services related to agricultural clearance orders and housing, and for the determination of areas of substantial unemployment pursuant to Defense Manpower Policy No. 4A and Executive Order 10582.

Funds for Labor Certification, Housing Inspections and ES–202 are being awarded under a cost reimbursable grant through a solicitation of grant application process; funds for TJTC and certain other activities are being awarded through a second segment to this overall reimbursable grant. However, in the case of activities which apply to the determination of areas of substantial unemployment, the Employment and Training Administration, under a memorandum of agreement with the Bureau of Labor Statistics, has transferred the data gathering responsibility for this activity to the Bureau. The Bureau of Labor Statistics will be awarding funds under separate reimbursable agreements with States for national labor statistics programs and within these agreements the provisions of data which apply to the determination of areas of substantial unemployment will be included.

Effective October 1, 1983, the following regulations apply to the selected activities under cost reimbursable agreements negotiated by the Secretary with States pursuant to Section 7(c) of the Wagner-Peyser Act:

Regulations at 20 CFR Parts 621, 655, and 656 shall apply to the administration of the certification of permanent and temporary foreign labor;

Regulations at 20 CFR Parts 653, Subpart F, and 654 shall apply to the provision of employment services related to agricultural worker clearance orders and housing inspections; and

Regulations at 20 CFR Part 654, Subparts A and B shall apply to the activities in the determination of areas of substantial unemployment.

Signed at Washington, D.C. this 28th day of October, 1983.

Richard C. Gilliland,

Director, U.S. Employment Service.

[FR Doc. 83-29754 Filed 11-1-83; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Petitions Under Part 10

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to add a new delegation of authority to act on petitions submitted under 21 CFR Part 10 to officials in the National Center for Drugs and Biologics (NCDB). The petitions covered by this delegation of authority are those that are submitted seeking a determination of the suitability of submission of an abbreviated new drug application (ANDA) for a product.

EFFECTIVE DATE: November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The authority to evaluate and respond to petitions seeking determination of ANDA suitability is being redelegated down to the Director, Office of Drugs, NCDB, because of that Office's past and continued involvement in ANDA matters.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended in § 5.31 by adding new paragraph (f), to read as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

§ 5.31 Petitions under Part 10.

* * * * *

(f) The following officials are

authorized to issue responses to citizen petitions submitted under § 10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product:

(1) The Director, NCDB.

(2) The Director, Office of Drugs, NCDB.

Effective date. This regulation shall become effective November 2, 1983.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: October 26, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-29798 Filed 10-31-83; 11:06 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 1H5321/R139C; PH-FRL 2460-1]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Dicamba; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; correction.

SUMMARY: This notice corrects the estimated residue contribution and oncogenic risk computations in a supplementary information notice in support of the food and feed additive regulations permitting the combined residues of the herbicide dicamba and its metabolite in or on the commodity sugarcane molasses.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1600).

SUPPLEMENTARY INFORMATION: In FR Doc. 83-20291 published in the **Federal Register** of July 27, 1983 (48 FR 34024), the Agency issued a notice that provided additional information in support of regulations permitting the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its sugarcane metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on sugarcane molasses. The following corrections are being made:

1. The computation for estimated residue contribution of dimethyl-*N*-nitrosoamine (DMNA), appearing in the second paragraph of the second column on page 34025, is corrected to read:

$$\frac{6.75 \times 10^{-9}\ \text{mg/day}}{60\ \text{kg}} = 1.13 \times 10^{-10}\ \text{mg/kg/day}$$

2. The exposure × slope risk computation, appearing in the third paragraph of the second column, on page 34025, is corrected to read:

1.3×10^{-9} mg/kg/day × 25.88 (mg/kg/day)$^{-1}$ = 2.9×10^{-8}.

Dated: October 18, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-29454 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Fenbendazole Granules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Hoechst Corp. providing for safe and effective use of fenbendazole granules as a canine anthelmintic.

EFFECTIVE DATE: November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Bob Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202-206 North, Somerville, NJ 08876, is sponsor of NADA 121-473 providing for use of fenbendazole granules 22.2 percent (Panacur® Granules 22.2%). The granules are indicated for oral use in dogs for the removal of ascarids (*Toxocara canis, Toxascaris leonina*), hookworms (*Ancylostoma caninun, Uncinaria stenocephala*), whipworms (*Trichuris vulpis*), and tapeworms (*Taenia posiformis*). The application is approved, and the regulations are amended accordingly.

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

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*)), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 520.905b is amended by revising paragraph (c) to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.905b Fenbendazole granules.

* * * * *

(c) *Conditions of use—(1) Horses—(i) Amount.* 5 milligrams per kilogram (2.3 milligrams per pound) for the control of large strongyles, small strongyles, and pinworms; 10 milligrams per kilogram for the control of ascarids.

(ii) *Indications for use.* For the control of infections of large strongyles (*Strongylus edentatus, S. equinus, S. vulgaris*), small strongyles, pinworms (*Oxyuris equi*), and ascarids (*Parascaris equorum*).

(iii) *Limitations.* Sprinkle the appropriate amount of drug on a small amount of the usual grain ration. Prepare for each horse individually. Witholding feed or water is not necessary. Retreat in 6 to 8 weeks if required. Do not use in horses intended for food. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

(2) *Dogs—(i) Amount.* 50 milligrams per kilogram (22.7 milligrams per pound) daily for 3 consecutive days.

(ii) *Indications for use.* For the removal of ascarids (*Toxocara canis, Toxascaris leonina*), hookworms (*Ancylostoma caninum, Uncinaria*

stenocephala), whipworms (*Trichuris vulpis*), and tapeworms (*Taenia pisiformis*).

(iii) *Limitations.* Mix the appropriate amount of drug with a small amount of the usual food; dry dog food may require slight moistening to facilitate mixing. Medicated food must be fully consumed. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation is effective November 2, 1983.

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

Dated: October 27, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-29667 Filed 11-1-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Service Contracts

Correction

In FR Doc. 83-28862, beginning on page 49736, in the issue of Thursday, October 27, 1983, make the following corrections:

1. On page 49739, in the third column, in the seventeenth line, "producer" should read "procedure".

2. On page 49749, in the third column, in the thirteenth line from the bottom, "are unique" should read "are not unique".

3. On page 49755, in the first column, in the sixteenth line, "in considered" should read "is considered".

4. On page 49768, in the second column, in § 4.6(g)(1), in the fifteenth line, "(vi) approved" should read "(iv) approved".

5. On page 49777, in the second column, in § 4.108, in the ninth line from the top, "statutes. District" should read "statutes, District".

6. On page 49778, in the third column, in § 4.113(a)(4), in the sixth line "or other" should read "of other".

7. On page 49780, in the first column, in § 4.116(c)(2), in the first line, "(2) *Services* " should read "(2) *Service* ".

8. On page 49791, in the first column, in § 4.167, in the last line, there should be a period at the end of the line.

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Post-Vietnam Era Veterans' Educational Assistance Program; Implementing Legislation

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Veterans' Compensation, Education and Employment Amendments of 1982 contain several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). One of these provisions requires the VA (Veterans Administration) to consider a serviceperson's lump-sum payments to the fund to have been made at the rate of $100 per month unless the serviceperson specifies a lower rate. In addition, individuals who are receiving educational assistance under VEAP no longer will have the assistance reduced or eliminated when they are incarcerated.

These amended regulations implement these provisions of law.

EFFECTIVE DATE: As is required by the Veterans' Compensation, Education and Employment Amendments of 1982, the effective date of the regulations is October 14, 1982. The revocation of 38 CFR 21.5139 is effective the same date.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 23444 and 23445 of the **Federal Register** of May 25, 1983 there was published notice of intent to amend Part 21 to implement some provisions of the Veterans' Compensation, Education and Employment Amendments of 1982.

Interested people were given 30 days in which to submit comments, suggestions or objections. The VA and DOD (Department of Defense) received one letter from a community college official containing an objection.

The official objected to the removal of the restriction on payments to incarcerated VEAP recipients. She suggested limiting payments to reimbursement for tuition, fees, books, and a stated amount for supplies.

While VA and DOD appreciate the concern behind this suggestion, the law does not permit its implementation. The previous limitations on payments to incarcerated veterans receiving VEAP payments were based on 38 U.S.C. 1780(a)(6). This provision forbids payment of educational assistance to any eligible veteran or person incarcerated in a Federal, State or local prison or jail to the extent the tuition and fees of the veteran or person were paid under any Federal program or under any State or local program, or for which there are no tuition and fees. The Veterans' Compensation, Education and Employment Amendments of 1982 rescinded this provision of law. Consequently, VA and DOD have no legal authority to reduce a veteran's assistance under VEAP when the veteran is incarcerated. VA and DOD are making the regulations final without change.

These regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. They will not result in any major increases in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs and the Secretary of Defense hereby certify that 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. 605(b). These regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these regulation changes concern only individual participants in VEAP, and simply reflect changes which have been made by Pub. L. 97-306, 96 Stat. 1429. Accordingly, they will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Veterans Administration, Vocational education, Vocational rehabilitation.

Approved: September 7, 1983.

Everett Alvarez, Jr.,

Deputy Administrator.

By direction of the Administrator:

Approved: October 17, 1983.

W. J. Gost,

Acting Deputy Assistant Secretary of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended as follows:

1. In § 21.5052, the introductory text of paragraph (f) is reprinted for the convenience of the reader and paragraph (f)(2) is revised as follows:

§ 21.5052 Contribution requirements.

* * * * *

(f) *Lump-sum contribution.* After September 30, 1980, an individual may make a lump-sum contribution or contributions in place of or in addition to monthly contributions.

* * * * *

(2) The Veterans Administration will consider the lump-sum contributions to have been made by monthly deductions from the participant's military pay at the rate of $100 per month unless the participant specifies a different rate which must be

(i) No lower than $25 per month,

(ii) No higher than $100 per month, and

(iii) Evenly divisible by five. (38 U.S.C. 1622(d); Pub. L. 97–306; 96 Stat. 1429)

* * * * *

2. In § 21.5071, paragraph (b) is revised as follows:

§ 21.5071 Months of entitlement allowed.

* * * * *

(b) *Entitlement based on lump-sum contributions.* If an individual elects to make a lump-sum contribution, the Veterans Administration will credit an individual with 1 month of entitlement for—

(1) Every $100 included in the lump sum, or

(2) Every amount included in the lump sum which—

(i) Is at least $25 but no more than $100,

(ii) Is evenly divisible by five, and

(iii) Is specifically designated by the individual at the time he or she makes the contribution. (38 U.S.C. 1622(d); Pub. L. 97–306, 95 Stat. 1429)

* * * * *

3. In § 21.5072, paragraph (a)(1) is revised as follows:

§ 21.5072 Entitlement charge.

* * * * *

(a) *Residence training.* (1) A charge against the period of entitlement for a program other than one leading to a secondary school diploma or an equivalency certificate where the monthly rate is based on the individual's tuition and fees or one consisting exclusively of flight training will be made as follows:

(i) The Veterans Administration will charge an individual who is a full-time student 1 month's entitlement for each monthly benefit paid to him or her. (38 U.S.C. 1631; Pub. L. 97–306, 96 Stat. 1429)

(ii) The Veterans Administration will charge an individual who is other than a full-time student 1 month's entitlement for each sum of money paid equivalent to what the individual would have been paid had he or she been a full-time student for 1 month.

* * * * *

4. In § 21.5138, the introductory portion preceding paragraph (a) and the introductory portion of paragraph (b) are revised to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

The Veterans Administration will compute all monthly rates and benefit payments as stated in this section except for those individuals to whom § 21.5136(b)(1) applies. (38 U.S.C. 1631; Pub. L. 97–306, 96 Stat. 1429)

* * * * *

(b) *Computation of benefit payment.* The Veterans Administration will compute benefit payments as follows: for all training except for those individuals to whom § 21.5136(b)(1) applies: (38 U.S.C. 1631; Pub. L. 97–306, 96 Stat. 1429)

* * * * *

§ 21.5139 [Removed]

5. Section 21.5139 is removed.

6. In § 21.5294,the introductory text of (d)(2) is reprinted for the convenience of the reader and paragraph (d)(2)(iv) is revised as follows:

§ 21.5294 Transfer of entitlement.

* * * * *

(d) *Application of sections to this portion of the pilot program.* * * *

(2) The following sections apply to this portion of the pilot program with amendments as noted:

* * * * *

(iv) In §§ 21.5132 through 21.5138 references to payment to the individual apply equally to payment to the spouse or child. (Sec. 903, Pub. L. 96–342; Pub. L. 97–306, 96 Stat. 1429)

* * * * *

[FR Doc. 83-29727 Filed 11-1-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2460-8]

Approval and Promulgation and Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: On July 14, 1982, the State of Ohio submitted revisions to the total suspended particulate (TSP) and sulfur dioxide (SO_2) portions of its State Implementation Plan (SIP). These revisions are in the form of individual variances for each of the four boilers at the Toledo Edison Company, Bay Shore Station, located in Washington Township (Lucas County) Ohio. The revisions include an alternative particulate emission control strategy ("bubble") along with an equivalent visible emission limitation (EVEL), as well as a provision to allow compliance with the existing SO_2 emission limitation to be based on a rolling weighted 30-day average. This notice approves the bubble strategy and EVEL, and takes no action on the SO_2 emission limitation.

DATE: This final rulemaking becomes effective December 2, 1983.

ADDRESSEES: Copies of this SIP revision are available at the following addressees:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

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

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

Office of the Federal Register, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 15076), the Environmental Protection Agency issued a proposed Emissions Trading Policy Statement, General Principles for Creation, Banking, and Use of Emission Reduction Credits. This statement indicated that it is the policy of EPA to encourage use of emissions trades to achieve more flexible, rapid, and efficient attainment

of national ambient air quality standards. This policy statement described emissions trading, sets out general principles EPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for states and industry to use these less costly control approaches. The April 7, 1982 notice indicates that until EPA takes final action on its policy statement, state actions involving emission trades would be evaluated under the provisions set forth in the proposed policy statement.

In accordance with the provisions contained in the proposed Emissions Trading Policy Statement, the State of Ohio on July 14, 1982, submitted to EPA revisions to the TSP portion of its SIP. These revisions are in the form of individual variances for each of the four boilers located at the Toledo Edison Company, Bay Shore Station, in the City of Oregon, Washington Township, Lucas County, Ohio. Washington Township is designated as a secondary nonattainment area for particulates (43 FR 46012). The variances contain particulate and sulfur dioxide emission limitations, equivalent visible emission limitations, and associated test methods and procedures. The State is requesting (1) the establishment of an alternative emission strategy ("bubble") that will incorporate the emissions of particulate matter from all four boilers under one limit, and (2) an equivalent visible emission limitation (EVEL) for the common stack serving the four boilers at the facility. For sulfur dioxide, the variances contain provisions to allow Toledo Edison to achieve compliance with its current Federally approved SO_2 limitation based on a rolling, 30-day weighted average of its fuel.

EPA reviewed the bubble strategy, the EVEL, and the SO_2 limitations and on January 21, 1983 (48 FR 2801) proposed to approve the bubble and the EVEL, and take no action on the SO_2 limits. Because EPA's review of these items were explained in detail in the notice of proposed rulemaking, EPA at this time will only summarize the main points regarding the bubble, EVEL, and SO_2 limits.

I. Bubble Strategy

- Rule 3745-17-10 of the Ohio Administrative Code (OAC) establishes a particulate limit of 0.1 lb/MMBTU for each of the four boiler's stacks at the Bay Shore Station.
- Particulate emissions from the four boilers at Bay Shore are now vented to the atmosphere through one stack instead of the individual four stackes used in the past.
- The State is requesting a TSP allowable emission limitation of no greater than 0.1 lb/MMBTU for the four boilers in the aggregate, considering the total heat imput to all four boilers, rather than the current limitation of 0.1 lb/MMBTU for each boiler.
- Under the proposed Emission Trading Policy, no modeling is needed to support the proposed Toledo Edison revision because:

(1) The trade does not result in a net increase in the appropriate RACT baseline emission level;

(2) The relevant sources are located in the same immediate vicinity; and

(3) No increase in emissions will occur at the sources with the lower effective plume height.

- EPA expects that Toledo will be able to achieve compliance with the 0.1 lb/MMBTU limit.
- EPA believes the 0.1 lb/MMBTU particulate emission limitation for the combined emissions from the four boilers is an appropriate RACT limit for these boilers.

II. Equivalent Visible Emission Limitation

- Rule 3745-17-07 of the Ohio Administrative Code specifies, for each stack, a general 20 percent opacity limitation with a 6 minute exemption up to 60 percent opacity.
- The State is requesting an EVEL of no greater than 29 percent opacity, with a 6 minute exemption of up to 60 percent opacity for the one stack.
- The 29 percent EVEL should ensure that Toledo Edison Company will be in compliance with the 0.1 lb/MMBTU RACT limitation.

III. Sulfur Dioxide Limitation

- Rule 3745-18-54 of the OAC establishes a sulfur dioxide limit of 1.94 lbs/MMBTU for each boiler, based on a rolling, 30-day weighted average of its fuel.

In an April 13, 1982 notice (47 FR 15782), EPA announced its decision to withold action on 30-day averaging provisions in the Ohio SO_2 SIP until a general review of 30-day averaging is complete. Since this review is still in process, EPA maintains its position that it is administratively more efficient and equitable to take no action on 30-day averaging at this time.

Interested parties were given until February 22, 1983, to provide comments on the notice of proposed rulemaking. EPA did not receive any comments during the comment period but did receive a comment from the State of Connecticut on March 14, 1983. The comment and EPA's response are addressed below.

Comment: The State of Connecticut objects to the lack of modeling for the Toledo Edison Bubble. They believe that a complete modeling analysis should be performed for any source which requests a bubble, especially for sources which have never undergone a thorough modeling review using current reference methods.

Response: EPA's guidelines for reviewing bubble trades are contained in the proposed Emissions Trading Policy Statement (47 FR 15076). Under that interim policy, EPA will approve bubbles in nonattainment areas lacking a fully approved demonstration of attainment by the end of 1982 if the State can show that the ambient effect of the new emission limits will be equivalent to what would occur under a baseline of reasonably available control technology (RACT).

In the Agency's view, a showing of ambient equivalence to the RACT baseline is adequate to assure that a bubble will not interfere with attainment or reasonable further progress toward attainment. However, the showing of ambient equivalence require of the States under the emissions trading policy does not necessarily required modeling. The proposed policy establishes a three-tiered modeling approach that States must use to demonstrate ambient equivalence. Level 1 requires no modeling if: (1) The proposed trade does not result in a net increase in applicable baseline emissions, (2) the relevant sources are located within 250 meters of each other, and (3) no increase in emissions occurs at the source with the lower effective stack height. It is EPA's position that if these three conditions are met, then the bubble will result in ambient equivalence. The Toledo Edison bubble satisfies each of these conditions and therefore EPA believes no modeling analysis is necessary to meet the requirements of the Clean Air Act.

Under this bubble, the single new stack at the plant will be taller than the four stacks it replaces. This means that maximum ground level concentrations under this bubble will decrease, thereby resulting in an improvement in the area's air quality.

After review of the public comment EPA takes final action today to approve the bubble strategy, the EVEL and take no action on the SO_2 limitations.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

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

Dated: October 24, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended.

1. Section 52.1870(c) is amended by adding new paragraph (58) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(58) On July 14, 1982, the State submitted revisions to its State Implementation Plan for TSP and SO_2 for Toledo Edison Company's Bay Shore Station in Lucas County, Ohio.

2. Section 52.1881 is amended by revising paragraph (a) and by adding new paragraph (a)(9) as follows:

§52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) USEPA is approving the portions of the Ohio sulfur dioxide control plan listed in paragraphs (a) (1), (2), (3) and (4) of this section; disapproving the portions listed in paragraphs (a) (5) and (7) of this section; and is neither approving nor disapproving the emission limitations listed in paragraphs (a)(8) and the emission measurement methods contained in (a) (6) and (9) of this section pending further review. The disapproved portions of the Ohio plan do not meet the requirements of § 51.13 of this chapter in that they do not provide for attainment and maintenance of the national standards for sulfur oxides (sulfur dioxide). (Where USEPA has approved the States's sulfur dioxide plan, those regulations supersede the federal sulfur dioxide plan contained in paragraph (b) of this section and § 52.1882.)

* * * * *

(9) *No Action.* EPA takes no action on the 30-day averaging provisions contained in the Toledo Edison Company's Bay Shore Station State Implementation Plan revision until a general review of 30-day averaging is complete.

[FR Doc. 83-29721 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2702/R620; PH-FRL 2458-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide aluminum tris (*O*-ethylphosphonate) in or on pineapples and pineapple fodder and forage. This regulation to allow the presence of residues of the fungicide in or on the commodities resulting from the preplanting dipping of pineapple crown seed pieces was requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on November 2, 1983.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 14, 1982 (47 FR 30640), which announced that Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Monmouth Junction, NJ 08852, had submitted pesticide petition 2F2702 to the Agency. The petition proposed that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the fungicide aluminum tris(O-ethylphosphonate) in or on the raw agricultural commodity pineapples resulting from the use of the fungicide as a preplant dip to pineapple crown seed pieces. This petition was subsequently amended by withdrawing the exemption and proposing tolerances of 0.1 ppm in pineapple and pineapple fodder and forage. No comments or request for referral to an advisory committee were received in response to the notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances included an oncogenicity study in mice with no oncogenic effects induced at any dose level under the conditions of the study (the highest dose tested was 2,857–4,286 mg/kg body weight/day). A rat chronic feeding/oncogenic study with a no-observed-effect level (NOEL) of 100 mg/kg body weight/day for systemic effects; a dog feeding study with a NOEL of 250 mg/kg body weight/day; a reproduction study with a NOEL of 300 mg/kg body weight/day; and teratology studies in rabbits and rats with the teratogenic NOEL's of 500 mg/kg/day and 1,000 mg/kg/day respectively.

Oncogenic effects were observed in the rat chronic feeding/ocogenic study at the mid- and high-dose levels. Microscopic pathology of the urinary bladder in males at the highest dose tested (30,000–40,000 ppm) revealed transitional cell carcinoma (no metastasis observed) and transitional cell papilloma. In addition, an increased incidence of pheochromocytoma was observed in male rats at the mid-dose (8,000 ppm) and the high-dose (30,000-40,000 ppm). The results of this study are summarized below:

Effects	Doses in parts per million			
Bladder tumors	0	2,000	8,000	30,000-40,000
Transitional cell carcinoma	1/78	0/80	0/81	5/79
Transitional cell papilloma	0/78	1/78	1/81	9/59
Pheochromocytoma (adrenal tumors):				
Malignant Pheochromocytoma	1	0	1	2
Pheochromocytoma	5	7	15	16
Totals	6/80	7/79	16/81	18/81

Based on these results, a provisional dietary oncogenic risk assessment was made for the worst case situation (i.e. all pineapple harvested and eaten would contain 0.1 ppm of aluminum tris ((O-ethylphosphonate) residues. This risk calculation is $2.4–2.7 \times 10^{-8}$.

Aluminum tris *O*-ethylphosphonate) readily breaks down into phosphorous

acid and ethanol with an estimated half life of 1 month. The time period from treatment to harvest for pineapples is 18 to 22 months. Therefore the actual residue expected in pineapples are expected to approach zero, giving an oncogenic risk which is many magnitudes lower than the Agency's calculated worst case risk.

Using a 100 fold safety factor and the NOEL of 100 mg/kg body weight/day determined by the 2-year rat feeding study, the allowable daily intake (ADI) is 1.0 mg/kg body weight/day. The maximum pearmissible intake (MPI) for a 60-kg person is 60.0 mg/day. The tolerances result in a theoretical maximum residue contribution (TMRC) of 0.00045 mg for 1.5 kg diet. These tolerances utilize less than 0.001 percent of the ADI and represents a provisional dietary oncogenic risk of $2.4-2.7\times10-^{8}$.

The metabolism of aluminum tris(*O*-ethylphosphonate) is adequately understood. There is no reasonable expectations of residues occuring in milk and meat of livestock or poultry. An adequate enforcement method exists for these tolerances.

Based on the above information considered by the Agency, the establishment of these tolerances by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Raw agricultural commodities, Pesticides and pests.

Dated: October 19, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended by establishing a new § 180.415 to read as follows:

§ 180.415 Aluminum tris (O-ethylphosphonate); tolerances residues.

Tolerances are established for residues of the fungicide aluminum tris (*O*-ethylphosphonate) in or on the following raw agricultural commodities:

Commodities	Parts per million
Pineapple	0.1
Pineapple fodder	0.1
Pineapple forage	0.1

[FR Doc. 83-29459 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2853/R608; PH-FRL 2459-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Inorganic Bromides Resulting From Fumigation With Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of inorganic bromides, resulting from postharvest fumigation with the pesticide methyl bromide, in or on the raw agricultural commodity blueberries. The regulation to establish a maximum permissible level for residues of inorganic bromides in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on November 2, 1983.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (202-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 31, 1983 (48 FR 39474), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2853 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of New Jersey and the New Jersey Department of Agriculture proposing the establishment of a tolerance for residues of inorganic bromides, resulting from postharvest fumigation with the pesticide methyl bromide, in or on the raw agricultural commodity blueberries at 20 parts per million (ppm).

There were no comments or request for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: October 14, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.123 is amended by adding, and alphabetically inserting, the raw agricultural commodity blueberries to read as follows:

§ 180.123 Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues.

* * * * * *

Commodities	Parts per million
* * * * *	
Blueberries (Post-H)	20.0
* * * * *	

[FR Doc. 83-29456 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 82-681; FCC 83-457]

Detariffing of Customer Premises Equipment and Customer Provided Cable/Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the Uniform System of Accounts for telephone companies as a result of detariffing customer premises equipment. This order establishes new account classifications and accounting instructions for coin-operated and credit card telephones, company-used station apparatus, key systems, and private branch exchanges. These changes are necessary to make the accounts consistent with regulatory changes adopted in CC Docket 20828. The action will minimize the record keeping burden on the telephone industry associated with regulated investment.

EFFECTIVE DATE: May 2, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Accounting and Audits Division, Common Carrier Bureau, 202/634-1861.

List of subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

Report and Order

In the matter of modifications to the Uniform System of Accounts for Class A and Class B Telephone Companies required by detariffing of customer premises equipment and proposed detariffing of customer provided cable/wiring installed as part of an intrasystem of PBXs and key systems; CC Docket No. 82-681.

Adopted: October 6, 1983.

Released: November 2, 1983.

By the Commission.

I. Introduction

1. This Report and Order amends various provisions of the Uniform System of Accounts for Class A and Class B Telephone Companies (USOA), Part 31 of the Commission's Rules and Regulations, to make the accounting rules consistent with previous Commission decisions concerning the detariffing of customer premises equipment (CPE) [1] and the expensing of inside wiring.[2] These amendments are necessary to separate certain regulated and nonregulated costs currently recorded in the same accounts and to clarify the accounting instructions as they relate to our decisions. The amendments adopted herein will become effective six months after publication of this Report and Order in the **Federal Register**, but as proposed carriers are permitted to implement these amendements retroactive to January 1, 1983.

2. The amendments adopted in this Report and Order are based on changes proposed in a Notice of Proposed Rulemaking (NPRM) released on October 4, 1982, 47 FR 44770 (October 12, 1982). In the NPRM, the Commission proposed the following accounting changes: (1) New account classifications and accounting instructions for coin-operated and credit card telephones; (2) new instructions to reclassify station apparatus, key systems, and private branch exchanges (PBXs) when used by a telephone company as part of its regulated business; (3) new accounting instructions to establish the intrasystem concept for PBXs and key systems and to provide for the detariffing of intrasystem wiring; (4) new instructions to clarify the accounting for network terminating wire installed for large PBXs; and (5) new instructions to account for detariffed PBXs or key systems installed by telephone companies on a sale or lease basis.

II. Background

3. In our *Computer II* decisions we determined that the provision of CPE was not communications common carriage subject to regulation and that CPE should not be provided under tariff. We also decided that the detariffing of CPE would be accomplished through a bifurcated transition plan that distinguished between "new" and "embedded" CPE. Under this plan new CPE was detariffed on January 1, 1983, and embedded CPE is to be detariffed after completion of a separate implementation proceeding, Docket 81-983,[3] which addresses problems of capital recovery and asset valuation, and various methods by which transition to an unregulated CPE environment can be achieved.

4. Under the current accounting rules account 231, "Station apparatus," and account 234, "Large private branch exchanges" primarily include embedded CPE which is to be detariffed under Docket 81-893. However, these accounts also included some equipment which was not detariffed under our *Computer II* decisions. Account 231 includes coin-operated and credit card telephones which were specifically excluded from the detariffing of CPE under *Computer II*, and accounts 231 and 234 include telephone equipment that is used by the telephone companies to conduct their regulated business which should remain in the regulated accounts. To avoid problems that might arise from recording these regulated assets in the same accounts with embedded CPE, we proposed several new accounts and accounting instructions in this proceeding.

5. In Docket 79-105, *First Report and Order*, the Commission decided that inside wiring included in account 232, "Station connections," should be expensed. Additionally, we stated that Docket 79-105 would be extended by separately issuing a *Further Notice of Inquiry* (*FNOI*) which would solicit comments on a proposal to deregulate the customer premises portion (inside wiring) of station connections. Based on the comments received, we believed that complex inside wiring [4] installed for use

[1] See Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (Final Decision), reconsideration, 88 FCC 2d 50 (1980), further reconsideration, 88 FCC 2d 512 (1981), aff'd sub. nom., CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982).

[2] See First Report and Order in Docket 79-105 (Expensing of Inside Wiring), 85 FCC 2d 818 (1981); Further Notice of Inquiry (Deregulation of Inside Wiring), 86 FCC 2d 885 (1981).

[3] Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), 48 FR 29691 (1983).

[4] We define this wiring as intrasystem wiring which includes all cable and wire and its associated components (e.g., connecting blocks, terminal boxes, conduit between buildings on the same customer's premises, etc.) which connect station components to one another or to the common equipment of a PBX or a key system.

with complex systems, such as a PBX or key system, could be detariffed. Therefore, we proposed in this proceeding to detariff the inside wiring installed for detariffed complex systems.

III. Proposed Revisions

Accounting for Coin Operated and Credit Card Telephones (Public Telephone Equipment)

6. In order to provide separate accounts for public telephones that would continue to be offered under tariff, we proposed to establish account 235, "Public telephone equipment" and account 607 "Repairs of public telephone equipment" to be used for recording the investment and expense, respectively, associated with coin-operated and credit card telephones. We also proposed to depreciate public telephone equipment using the more traditional retirement unit basis [5] instead of the "cradle-to-grave" method [6] that has been used for CPE in the past. The proposed change in depreciation would require the establishment of a Continuing Property Record (CPR) [7] on an accounting area basis.[8] Also, under our proposal an appropriate number of operating spares needed to provide for continuity of public telephone service would be capitalized in account 235. In the expense area we proposed to record in account 607: (1) The cost of replacing the coin-operated and credit card telephone with an operating spare; (2) the cost of premises wiring and its associated installation labor; and (3) all normal and ordinary maintenance.

7. We also stated in the NPRM that telephone extensions provided with semi-public telephones are ordinary subscriber equipment and have been detariffed under our *Computer II* decisions but the inside wiring installed for these extensions remain tariffed. We also determined that emergency telephone equipment (i.e., highway, bridge, fire and police, etc.) does not come under our definition of public telephone equipment and that emergency telephone equipment was detariffed under *Computer II.*

[5] Commission's Rules and Regulations, Part 31, § 31.2-25.

[6] Cradle-to-grave is a form of plant accounting wherein life indication considers a unit of plant as being in service from the time it is first delivered and booked until it is finally junked, reclassified to another account, or is otherwise finally disposed of.

[7] Commission's Rules and Regulations, Part 31, § 31.2-26(d).

[8] Commission's Rules and Regulations, Part 31, Appendix B, 1(a).

Accounting for Company Used Station Apparatus and Large PBXs

8. In order to separate company-used equipment from embedded CPE, we proposed to record company-used equipment in the regulated plant accounts on a functional basis rather than by type of equipment. We proposed to record company-used equipment that only handles the company's internal business operations in account 261, "Furniture and office equipment" and company-used equipment that also handles the switching of customer traffic in account 221, "Central office equipment." Additionally, we proposed the establishment of retirement units covering company-used equipment and proposed to extend to company-used equipment the $200 criterion [9] that is used as a basis for determining whether the equipment should be capitalized or charged to expense.

Accounting Instruction To Establish the Intrasystem Concept for PBXs and Key Systems To Provide for the Detariffing of New Intrasystem Wiring

9. We proposed an intrasystem concept for new detariffed PBXs and key systems, which would consist of common equipment (a switchboard or switching equipment shared by all stations), station equipment (usually, telephones or key telephone systems), and intrasystem wiring. The intrasystem wiring would consist of all cable or wiring and associated components located on the customer's side of the demarcation point when it is inside a building or between a customer's buildings located on the same or contiguous property not separated by a public thoroughfare. Based on the intrasystem concept, we proposed to detariff intrasystem wiring in the same way and the same basis as we detariffed CPE in Computer II. We also proposed that account 232 be amended to preclude the recording of new intrasystem wiring.

Accounting for Network Terminating Wire

10. In addition to large PBX systems, account 234 includes a small portion of cable (wire) that runs from the house cable terminal to the demarcation point (network terminating wire) which carriers must provide under tariff. Capitalization of this wire in account 234 is currently required by the accounting rules. We proposed that all new installations of network terminating wire be expensed on a flash-cut basis to account 605.

[9] See Docket 81-273 Report and Order (Expensing Minor Items), 87 FCC 2d 1137.

Accounting for Sale or Lease of Detariffed PBXs or Key Systems

11. We proposed interim accounting instructions for telephone companies that directly (not through a separate subsidiary) sell or lease detariffed PBXs, key systems, and station apparatus. For this purpose, we applied the interim accounting ordered in Docket 79-105 for CPE that is sold. That is, the transactions related to nonregulated sale of CPE would be recorded in account 124, "Merchandise and materials held for sale," account 316, "Miscellaneous income," and account 327, "Other non-operating taxes," as appropriate. For CPE leased on a nonregulated basis, we proposed to record the CPE in account 103, "Miscellaneous physical property," and we proposed to apply the current rules for account 315, "Income from miscellaneous physical property," and account 174, "Other deferred credits," to record the revenue and cost for this detariffed activity. We stated that final accounting to record nonregulated activities in separate books of account would be addressed in Docket 81-893.

IV. Summary of Comments

12. In our NPRM interested parties were invited to file comments on or before November 8, 1982, and reply comments on or before November 23, 1982. Comments and reply comments were received from American Telephone and Telegraph Company and its associated Bell System Operating Companies (AT&T); GTE Service Corporation and it affiliated domestic telephone companies (GTE); United Telecommunications System, Inc. (UTS); United States Independent Telephone Association (USITA); State of California and California Public Utilities Commission (California); Michigan Public Service Commission (Michigan); Tennessee Public Service Commission (Tennessee); and North American Telephone Association (NATA). Reply comments only were received from Rochester Telephone Corporation (RTC) and the National Telephone Cooperative Association (NTCA).

Comments on Accounting for Coin Operated and Credit Card Telephones (Public Telephone Equipment)

13. The respondents generally support our proposal to establish accounts 235 and 607 to separate public telephone plant and expense from embedded CPE. However, several respondents recommend refinements or modifications related to the new accounts.

14. AT&T and RTC urge that account 235 be used for embedded public telephone equipment as well as new equipment at the time this account is established. They contend that our proposal to leave the embedded equipment in account 231 until the method of allocating depreciation reserves is determined in Docket 81-893 would create extremely difficult administrative problems and would cause additional costs to be incurred to establish procedures to separately identify new and embedded telephone equipment. AT&T claims that it has the means to identify the book cost of its embedded public telephone equipment and the depreciation reserve associated with this investment on a reasonable interim allocation basis until the resolution of the valuation issue raised in Docket 81-893.

15. MCI suggests that our proposal should be modified to require that coin-operated telephones and credit card telephones be separated in the accounting records. MCI states that coin-operated telephones can serve both local and long distance customers whereas credit card telephones are primarily for long distance toll calls, and exclusively for long-distance calls placed over the AT&T long distance network. It claims that none of the investment or expenses associated with credit card telephones should be attributed to MCI or the other OCCs.

16. AT&T and RTC object to our proposal to capitalize the labor costs of installing public telephones. They maintain that installation labor costs were required to be expended in Docket 79-105 and that the rationale for expensing these costs is still valid and should not be modified where public telephone installation costs are involved. On the other hand, GTE, MCI, California, Michigan and Tennessee generally support our proposal.

17. UTS and GTE recommend that we require "cradle-to-grave" accounting to be used for account 235 instead of the retirement unit basis that we proposed. Both parties feel that public telephone equipment, including operating spares should be recorded in accordance with "cradle-to-grave" procedures. This would allow the carriers the option of subaccounting between in-servce and inventoried items in account 235. Otherwise, they believe that there will be unnecessary administrative burdens in distinguishing items of public telephone equipment recorded in account 122 from those recorded in account 235. However, AT&T, RTC, USITA and Michigan favor our proposal to require the more traditional retirement unit basis.

18. Michigan and AT&T request that we modify our proposal to capitalize as operating spares in account 235 an appropriate number of public telephone sets and other equipment needed to provide continuity of service. Specifically, they suggest that we define operating spares as spare equipment which is available on an "as needed" basis, not to exceed six months supply in terms of turnover, to installers from locations in reasonable proximity to the location of the installed equipment. USITA, on the other hand, disagreed with our proposal for operating spares. USITA recommends that spares and all other materials or equipment purchased for public telephone equipment inventory be recorded in account 122. It feels this recommendation would simplify the accounting process for smaller telephone companies. As stated above, UTS and GTE recommend that all spares be recorded in account 235.

19. Five parties commented on our proposal to expense the cost of the premise wiring including its associated installation labor in account 607. AT&T, GTE and RTC support our proposal, whereas, California and Tennessee disagree. California and Tennessee claim that the premise wiring installed for public telephones has characteristics similar to those of drop and block wires which are capitalized. Moreover, these parties maintain that this wiring is not subject to the churn that led to the decision to expense inside wiring when used with CPE as discussed in the Commission's decision in Docket 79-105. They claim, therefore, that the premise wiring should be capitalized. AT&T in its reply comments disagrees with California and Tennessee. In the opinion of AT&T the public telephone premise wiring is an item of minor cost and low intrinsic value, the usefulness of which is controlled in most instances by a property owner and not by the telephone company.

20. We received only one comment on our proposal to expense the labor cost of replacing public telephone equipment with operating spares. California states that if premise wiring for public telephones is capitalized then the costs of replacing coin-operated and credit card telephones with operating spares should also be capitalized. California maintains the replacement costs associated with operating spares should be accounted for the same as other plant items; that is, the removal cost of the old equipment should be charged to the depreciation reserve and installation cost of the operating spare should be capitalized to account 235.

21. RTC and UTS argue that telephone extensions should be treated as part of the public telephone service rather than being subject to our *Computer II* decisions. RTC argues that such extensions should only be used to answer calls. Further, RTC states its customers are not permitted to interconnect extensions to coin telephones since extensions can originate telephone calls without charge Therefore, coin extensions should not necessarily be accounted for as detariffed items, but should be treated as coin telephones. UTS indicates that, if connection of CPE to coin lines is permitted, then it would endure significant economic burden to either modify public telephones or discontinue offering public telephones with noncoin extensions to prevent fraudulent toll billing. In its reply comments, AT&T states that it does not foresee any insurmountable technical problems with the detariffing of extension telephones connected to public telephones since it can install a network interface to provide security and privacy features.

Comments on Accounting for Company Used Station Apparatus and Large PBXs

22. AT&T, GTE, RTC, UTS, USITA, MCI, California, Michigan and Tennessee favor our proposal to classify all new equipment acquired for company use in account 221 or account 261 based on the equipment's function. However, several of the respondents offer modifications to our proposal.

23. As in the case of our proposal for public telephone equipment, AT&T and RTC state that our proposal to leave embedded company used equipment in accounts 231 and 234 would create substantial administrative problems. Also, these respondents point out that under our bifurcated accounting identical equipment serving the same function in the same or similar location would be given completely different accounting treament according to when it was put into service. In order to avoid these problems AT&T and RTC recommend that we reclassify embedded investment in company-used equipment from account 231 and account 234 to account 221 or account 261, as appropriate, upon the effective date of the accounting change. AT&T states it can readily identify the book cost of the company-used equipment and that the depreciation reserve could be allocated on an interim basis and trued up upon resolution of the valuation question being considered in Docket 81-893.

24. Although MCI generally supports our proposal to reclassify company-used equipment, it believes that such equipment devoted to company use should be placed in a separate account or at least in separate subaccounts of accounts 221 and 261. While MCI does not express the specific benefit that would be achieved by this disaggregation, it indicates its desire to identify company-used equipment separately from other equipment.

25. RTC expresses concern that our proposal would require additional retirement units for company-used telephone equipment transferred to account 261. RTC states that items currently recorded in account 261 have separate identifiable retirement units for which individual property records are kept, and that each item is normally retired at its own identifiable and distinct unit cost. However, station apparatus property records which we propose to transfer are maintained on average unit cost. Additionally, station apparatus includes the basic instrument and miscellaneous auxiliary equipment. RTC believes it would not be practical to maintain individual cost records for each item of official station apparatus as is required for other items recorded in account 261. RTC prefers that station apparatus be maintained in account 261 on the average cost basis as it is currently maintained in account 231.

26. AT&T, GTE, RTC and UTS support our proposal to extend the $200 expensing limit criterion as a basis for determining whether the company-used equipment should be capitalized to account 221 or account 261, as appropriate, or charged to expense. However, AT&T, RTC, and UTS request that the Commission provide for amortization of the embedded investment in company-used equipment covered by the $200 expensing limit. These parties recommend that the Commission implement procedures identical to those established in Docket 81-273, 87 FCC 2d 1137, which would amortize embedded investment in company-used equipment within the $200 expense limit over a period of five years.

27. California and Tennessee express the belief that the proposed $200 criterion is inappropriate for key systems, PBX systems, and centrex systems. They suggest that the intrasystem concept be applied to all individual items including the telephone sets of company-used key systems, PBX systems, and centrex systems. They state that the retirement unit should consist of all components of the intrasystem necessary to make it a functioning unit. AT&T and GTE, in their reply comments, state that this proposal would be administratively burdensome since individual sets can be installed as stand alone units or connected and interchanged among systems.

28. Michigan also disagrees with our proposal to use the $200 criterion as a basis in determining whether to capitalize or expense company-used equipment. Michigan believes that physical inventory controls would be made impractical because property units which were capitalized one year and expensed the next would not be distinguishable and depreciation histories would be based upon incomplete records. Michigan suggests that the basis for expensing or capitalizing company-used equipment should be determined by the broad category or type of equipment or apparatus involved. Michigan suggests that this method would provide meaningful inventory checks and depreciation asset histories based upon the total activity associated with such units.

Comments on Proposed Detariffing of Intrasystem Wiring

29. The respondents generally favor our proposal to define PBXs and key systems on an intrasystem basis and to detariff the intrasystem wiring. An intrasystem was defined as common equipment (a switchboard or switching equipment shared by all stations), station equipment (usually telephones or key telephone systems), and intrasystem wiring. Intrasystem wiring was defined as all cable or wiring and associated components which connect the common equipment and the station equipment and which are located inside a building or between a customer's buildings located on the same or contiguous property not separated by a public thoroughfare.

30. AT&T and NATA raise questions and request clarification concerning our proposal as it relates to house cable. House cable is the cable on a customer's premises that runs from the outside plant terminal up through various floors of the building and is located on the company's side of the demarcation point. AT&T states that our proposal could be interpreted as prohibiting the continued classification of house cable in account 242.1, "Aerial cable," when the house cable serves solely as intrasystem wiring. NATA believes that our proposal would require house cable to be offered pursuant to tariff and asks whether this cable would be tariffed apart from the local exchange. NATA wants to ensure that this proposal would not inhibit free access to this cable by users and the vendors that service them.

31. Several respondents request clarifications or modifications concerning intrasystem wiring. AT&T and RTC ask that we make it clear that the detariffing of intrasystem wiring applies only to wiring installed as part of a detariffed CPE system. NATA and RTC object to the exclusion of wiring that crosses a public thoroughfare or that connects noncontiguous property. They claim that this exclusion is too restrictive and does not ensure that the goals of competition and user benefits will be adequately served. RTC also states that technical configurations and state law should govern where an entity could place this wiring. California and Tennessee suggest that the embedded intrasystem wiring be included in Docket 81-893 so that problems associated with the valuation and sale of intrasystem wiring and its associated complex business systems will be resolved.

32. NATA claims that American Bell Inc. (ABI) and the regulated carriers should not be permitted to retain ownership in any new detariffed intrasystem wiring for the next five years. NATA feels this restriction would mitigate a dangerous potential bottleneck that could occur when a customer wants to replace or modify its existing system but is denied access to the intrasystem wiring. AT&T, in its reply comments, states that such a restriction would in effect prohibit ABI and other regulated carriers from installing detariffed intrasystem wiring on a lease basis. AT&T maintains that this would place ABI and the regulated carriers at a competitive disadvantage in the PBX market.

33. Finally, Michigan and California comment on our proposal to no longer permit the recording of intrasystem wiring in account 232. Michigan suggests that the present accounting should continue until after divestiture is completed to ensure that the total cost of all complex systems will have been accounted for and valued in a consistent manner. California asks for clarification of paragraph 25 of our NPRM which states that intrasystem wiring is currently recorded in account 232. California believes that Note A to account 232 limits the recording of intrasystem wiring in that account to wiring costs associated with small PBXs and that the intrasystem wiring for large PBXs is recorded in account 234. It asks for clarification of this matter so that it can determine whether carriers have been improperly expensing wiring pursuant to Docket 79-105, *supra*, that

should have been capitalized in account 234.

Comments on Proposed New Instructions To Clarify the Accounting for Network Terminating Wire Installed for Large PBXs

34. AT&T, GTE, UTS, MCI, and USITA favor our proposal to change the costs of installing network terminating wire on all new installations of large PBXs to expense account 605. Currently, these costs are capitalized in account 234.

35. California, NATA, and RTC offer an alternative to our proposal. They suggest that this wire be capitalized in account 242:1, "Aerial cable," or account 242:2, "Underground cable," as appropriate. They contend that this wiring is similar to the "other" subclass of account 232, which we established in Docket 79-105, *supra*, and that it is available to provide service for all future customers. In its reply comments, AT&T opposes capitalization of this cost. It states that network terminating wire is customer-specific and is not available for use by all future customers.

36. Although in favor of our proposal to expense network terminating wire, MCI and AT&T suggest modifications. MCI suggests that the expenses for installing network terminating wire be accounted for in a separate subaccount of account 605 in order to provide a better keep cost record on the cost-causative ratepayer. AT&T suggests that this rule also cover the embedded network terminating wire which we excluded from this proceeding. AT&T states that this investment serves a network distribution function as distinguished from the terminal equipment function and should be segregated and reclassified to account 232. It states that the embedded investment should be amortized under the same procedures as are being used for the amortization of inside wiring subclass of account 232, pursuant to our Order in Docket 79-105, *supra*.

Comments on Proposed Accounting for Sale or Lease of Detariffed PBXs and Key Systems

37. AT&T, RTC, MCI, and NATA commented on our proposed accounting for detariffed sale of PBXs and key systems in which we proposed to use account 124, "merchandise and material held for sale," account 316, "Miscellaneous income," and account 327, "Other nonoperating taxes." All four parties agree with the basic proposal, but MCI and NATA suggest that separate subaccounts be prescribed for account 316 to avoid difficulty in determining what revenues and expenses are associated with these sales.

38. Our proposed accounting for detariffed leasing of PBXs and key systems is favored by AT&T, GTE, RTC, USITA, and MCI and is opposed by UTS, NATA, and NTCA. For leases we proposed to use account 103, "Miscellaneous physical property," account 315, "Income from miscellaneous physical property," and account 174, "Other deferred credits." Although MCI favors our proposal, it believes that separate subaccounts should be maintained for large PBXs, small PBXs and key systems to the maximum extent possible. MCI feels its suggestion will provide flexibility in obtaining data for separate detariffed leased systems.

39. UTS, NATA and NTCA disagree with our proposal arguing that the proposed accounting is inappropriate. UTS feels that account 103 is not descriptive of these detariffed leases that would be recorded in this account. UTS recommends that the detariffed leases be recorded in a new account which would be more descriptive of the content. In a similar vein, NTCA states that leased detariffed PBXs and key systems are telecommunications plant and should not be classified with non-telecommunications plant equipment held incident to the company's telephone operations. Accordingly, NTCA recommends that we establish a new account for these leases, account 100.8, "Other telecommunications plant." It recommends further that this account include the telephone company's investment in telephone property retired and held for sale. Also, NTCA states account 103 should be redefined to exclude the carrier's investment in physical property that is telecommunications plant. Finally, NTCA suggests that the titles and texts to accounts 315 and 174 should be changed to specify other telecommunications plant.

40. In a related matter, USITA states that our present reporting requirement for Annual Report Form M Schedule 16 "Miscellaneous Physical Property" covering detariffed leased systems activity recorded in account 103, account 315, etc., on a location basis should be modified. It claims that the lease of detariffed PBX systems and key systems will be a part of the carriers nonregulated operations, and should not be subject to the present reporting requirement of Schedule 16. It also believes that much of the information involved is proprietary and should not be included in a public document such as Form M. In its reply comments AT&T supports USITA's position.

V. Discussion

Accounting for Coin-Operated and Credit Card Telephones (Public Telephone Equipment)

41. Generally, all respondents favor our proposal to establish a new plant account (account 235) and a new expense account (account 607) to separate costs associated with public telephones from costs associated with embedded CPE. There are, however, several related issues raised by the respondents.

42. The first issue was raised by AT&T and RTC. They recommend that embedded telephone equipment be reclassified to account 235, on a flash-cut basis. They state that our proposal to limit account 235 to new equipment until valuation questions on embedded equipment are resolved in Docket 81-893 will cause extreme hardships on the carriers by requiring detailed records to be maintained in order to separately identify new and embedded public telephone equipment. We believe there is merit to their contention and we have determined that the embedded public telephone equipment can be included in this proceeding, without impacting the valuation problem of CPE being addressed in Docket 81-893. Therefore, we have modified our proposal and require the transfer of the embedded public telephone investment on a flash-cut basis. Further, any adjustments to the embedded public telephone plant that arise when the CPE valuation is resolved will be addressed in Docket 81-893.

43. The second issue was raised by MCI. MCI states that credit card telephones, thereafter will be designated as coinless telephones, should be recorded in separate accounts or subaccounts from coin-operated telephones. It claims that credit card telephones should be segregated in the accounts because they are used exclusively for calls over AT&T's long-distance network. MCI states that the investment and expenses associated with coinless telephones should not, therefore, be attributed to MCI or other common carriers. After carefully considering these points we believe that the segregation of telephones in the accounts is necessary. Additionally, we believe the coinless telephone costs should be segregated in order to provide any cost data we may require for access costs or any other regulatory need. Therefore, we will require a separate subclass to be established in account

235 and account 607 to identify coinless telephone investment and expense.

44. The third issue concerns our proposal to record operating spares in account 235. USITA, UTS and GTE believe that our proposal would cause unwarranted administrative burdens in identifying operating spares recorded in account 235 as opposed to spares recorded in account 122. On the other hand, Michigan and AT&T favor our accounting but suggest that we define operating spares as spare equipment which is available on an "as needed" basis, not to exceed a six month supply in terms of turnover, to installers from locations in reasonable proximity to the location of the installed equipment. Our primary objective for capitalizing operating spares was to establish the accounting that would provide carriers the ability to maintain a continuity of service for public telephones without incurring retirement accounting to cover this activity. Moreover, we feel that our operating spares concept will not cause any additional hardships on the carriers since we envision the capitalized operating spares to be located in specific locations that would be separate and distinct from the locations used to house equipment classified to account 122. However, we believe that the definition of operating spares that Michigan and AT&T suggest will provide a sound basis to be used for identifying the capitalized operating spares. Therefore, we have amended § 31.235 to include this definition.

45. The fourth issue results from the comments of AT&T, RTC, California, and Tennessee. We proposed to expense the costs of premise wiring associated with the installation of public telephones and to capitalize all other installation costs. AT&T and RTC state that all costs of installing public telephones should be expensed. They contend that Docket 79-105 required these costs to be expensed, and they see no reason to deviate from that decision in this proceeding. California and Tennessee, on the other hand, argue that premise wiring installed for use with public telephones should be capitalized instead of expensed as we proposed. They maintain that this wiring is not subject to churn from customer movement that was the basis for expensing inside wiring in Docket 79-105.

46. We proposed to capitalize the costs of installing public telephones because expensing these costs appeared inappropriate. Unlike other customer premises equipment there is no cost causative customer that could be billed immediately to recover the cost of installing public telephones. The costs of installing public telephones are recovered in future revenues from users of the public telephones. For this reason we believe it is appropriate to capitalize the costs of installing public telephones and to depreciate these costs with the future revenues. Moreover, in reviewing this matter, we agree with California and Tennessee that the rationale for capitalizing the installation costs is equally applicable to the premise wiring associated with public telephones. Accordingly, we are requiring that all costs of installing public telephone equipment including premise wiring should be capitalized in account 235.

47. The fifth issue was raised by California. California states that if premise wiring is capitalized, the cost of replacing a public telephone with an operating spare should be charged to depreciation reserve account 171 rather than to expense to account 607. Our purpose in proposing to record operating spares in account 235 was to avoid the accounting associated with retirements that California would have to apply to operating spares. We established the accounting for operating spares so that the costs for replacing equipment which is normal maintenance would be charged to expense. Moreover, we believe our proposal is consistent with good accounting principles in that it provides for capitalizing the initial spare equipment purchased to support operated plant. Also, we believe that if the replacement costs are capitalized the ratepayer will be burdened with costs that provide no additional benefit to them. Therefore, we are adopting our proposal to expense the cost of replacing a public telephone with an operating spare.

48. The sixth issue is the concern of GTE and UTS. They contend that cradle-to-grave accounting should continue to be applied to public telephone equipment. They also recommend that all spares be recorded in account 235 to accommodate the cradle-to-grave accounting and avoid unnecessary recordkeeping to distinguish between in-service and inventoried public telephone equipment. We have reviewed their suggestions and are convinced that the traditional retirement unit method for depreciation accounting is more appropriate for account 235. When the Commission established account 231 in 1956 [10] our reason for requiring cradle-to-grave accounting was to provide for a simplified accounting to be applied to the frequent movement of customer premise station apparatus. We have received no evidence from the comments that leads us to believe that the public telephone equipment will be subject to the same movement as CPE. Therefore, we deny the request of UTS and GTE for cradle-to-grave accounting.

49. The seventh issue was raised by RTC and UTS. They argue that public telephone extension should be treated as part of the public telephone equipment and not considered CPE subject to our *Computer II* decision. RTC indicates that the extensions cannot originate calls but only receive calls and as such should not be considered CPE. UTS states that the detariffing of public telephone extensions could result in fraudulent toll billings. UTS feels it could only correct this problem by either modifying the public telephones or no longer offering public telephones with noncoin extensions. We believe the carriers have the capability to provide security and privacy features, and these same problems exist today. As a matter of fact AT&T supports this point in its reply comments. Furthermore, the wiring from the public telephone to the extension or at least to the interface is still regulated, so that the carriers will be able to install the appropriate interface to overcome the problem UTS has raised. Therefore, we reconfirm that public telephone extensions are CPE and were deregulated in our *Computer II* decision.

Accounting for Company Used Station Apparatus and Large PBXs

50. All of the respondents favor our proposal to classify all new equipment installed for company use on a functional basis. However, as in the case of public telephones, some parties raise related issues.

51. The first issue concerns the treatment of embedded company used equipment. We proposed to require the functional classification of company used equipment only for new equipment. We did not propose to require the reclassification of embedded equipment on a functional basis because questions related to the allocation of depreciation reserves for embedded equipment are being addressed in Docket 81-893, *supra*. In the NPRM we stated our intention to reclassify embedded equipment after the reserve allocation questions were resolved. AT&T and RTC state, however, that delay in reclassifying embedded equipment would require unnecessary accounting

[10] Amended Part 31 of the Commission's Rules and Regulations with respect to accounting for station apparatus station installations and station wiring. Docket 11769, Report and Order (Simplified Accounting for Station Equipment), 21 FR 7446 (1956)

records to segregate identical equipment installed at the same location and performing the same function. Therefore, they recommend functional classification for embedded as well as new equipment. One of our primary purposes in proposing to delay reclassification of embedded equipment was to avoid unnecessary recordkeeping for the carriers. Since the comments indicate that delay would cause the recordkeeping problems we wanted to avoid, we have decided to apply the new functional account classifications to both new and embedded company used equipment.

52. The second issue is whether account 261, "Furniture and office equipment," should be used to record company-used equipment that only handles the company's internal business. RTC indicates that recording this equipment in account 261 would cause costly additional recordkeeping because items currently recorded in that account have separate identifiable retirement units with individual property records whereas the company-used station apparatus which we proposed to reclassify is maintained in the records on an average unit cost basis. RTC believes it would not be practical to maintain individual cost records for each item of official station apparatus and recommends that this equipment continue to be maintained on an average cost basis. Our purpose in proposing to reclassify company-used equipment was to segregate it from embedded CPE. We did not intend to increase carrier recordkeeping requirements. In view of RTC's comments, we have decided to establish a new account 262, "Other communications equipment," to be used to record the costs associated with the installation of the new and embedded company official business equipment. Additionally, we have established retirement units for account 262, see appendix to this Order, and require all retirements of this equipment to conform with our rules covering normal retirement accounting as prescribed in the Commission's Rules and Regulations Part 31, § 31.2-25. Under account 262, the carriers can record this equipment in the CPR by accounting area. The establishment of account 262 will permit the carriers to maintain records for this equipment on an average unit cost basis as they have in the past.

53. The third issue concerns our proposal to extend to the reclassified company-used equipment the $200 criterion for determining whether to expense or capitalize equipment. Michigan disagrees with our proposal. It suggests that the basis for expensing or capitalizing company-used equipment should be determined by broad category or type of equipment or apparatus involved. No other respondent opposes use of the criterion. However, California and Tennessee argue that, in applying the criterion, telephone sets used with PBXs should be capitalized as part of the intrasystem regardless of their cost. They contend that telephone sets are an integral part of the system and should be accounted for the same as the other items that make up the system. AT&T and GTE, on the other hand, argue that capitalizing telephone sets when part of an intrasystem would be administratively burdensome because individual telephone sets can be installed as stand alone units or connected and interchanged among systems.

54. We believe the proposed $200 criterion is a practical method of determining when assets of relatively minor value should be expensed rather than capitalized. Using this criterion reduces the administrative costs of maintaining inventory and depreciation records for equipment we have identified as minor items. We also believe, however, that this criterion should be based on the total cost of the asset acquired. This is consistent with sound accounting principles which require capitalization of all costs of acquiring an asset and making it ready for use. In this regard we believe that when complex intrasystems are installed for company use, the asset acquired is the intrasystem. Therefore, we agree with California and Tennessee that telephone sets should be capitalized when installed as part of the initial installation of an intrasystem. In such instances, however, we believe the retirement unit is the intrasystem. Therefore, we do not believe that extensive recordkeeping would be necessary for the individual telephone sets that are used in the system. This should reduce administrative burdens. Based on the foregoing, we have decided to adopt the $200 criterion we proposed, but we have modified the rules to make it clear that individual telephone sets, as well as wiring, installed as part of the initial installation of an intrasystem should be capitalized. Thus, the $200 criterion with regard to telephone sets would be applied to stand alone units and units used for replacement or repairs of intrasystems.

55. The fourth issue concerns the application of the $200 expensing criterion to embedded investment. Several parties argue that the embedded investment in company used equipment covered by the $200 expensing limit should be amortized over a period of five years. these parties state the rationale established in Docket 81-273, 87 FCC 2d 1137,[11] supports their recommendation to use a five year amortization period. Although we did not address this issue in our NPRM, we agree that the embedded company-used equipment subject to the $200 limit should be amortized. We have reviewed the amortization rationale put forth in Docket 81-273, and we have determined that it is appropriate for the $200 or less company used equipment when applied on an intrasystem basis as discussed in the preceding paragraph. The change from depreciation to amortization for the Bell System's estimated $129 million embedded base will increase Bell System expenses by approximately $10 million per year. This change could also add about $6 million in additional Bell System expenses for new purchases. Initially, this will result in a minor encrease in the telephone companies' operating expenses for station apparatus. This initial increase will be partially offset, however, by reduced recordkeeping expenses. Moreover, in the long run, the elimination of these costs from the rate base will reduce the carriers revenue requirements. Therefore, the long range effect of this change will be beneficial to the ratepayers. We see no need to transfer this investment from account 231 since it will be removed from the regulated rate base after five years. However, we will require that this equipment be separately identified and amortized as a specific subclass of account 231.

Detariffing of Intrasystem Wiring

56. Generally, all comments favor our basic proposal to define complex systems (PBXs and key systems) on an intrasystem basis and to detariff intrasystem wiring. There are, however, several requests for clarification, interpretation, or modification which require discussion.

57. First, AT&T asks for clarification of the status of house cable under our proposal. It is concerned that under the proposal house cable used solely as intrasystem wiring could no longer be recorded in account 242:1, "Aerial cable." House cable is the cable on the customer's premises that runs from the outside plant terminal up through various floors of the building and is located on the company's side of the

[11] Docket 81-273 Report and Order (Expensing Minor Items), increased the dollar limit for expensing minor items to $200 and requires the embedded investment between the old and new limits to be amortized over a 5 year period.

demarcation point. Under our proposal intrasystem wiring is located on the customer's side of the demarcation point. Thus, there is nothing in our proposal to prohibit recording house cable in account 242:1. We would point out, however, that stub runs of cable installed for a specific PBX or key system customer on the customer's side of the demarcation point constitute intrasystem wiring, not house cable, and should not be recorded in account 242:1. We are modifying the rules to clarify these points.

58. Second, NATA raises questions concerning access to house cable by users and the vendors that service them. In this regard, NATA questions whether house cable would be offered pursuant to tariff under our proposal and, if so, whether it would be tariffed apart from the local network. Nothing in our proposal would change the tariff status of house cable on the company's side of the demarcation point. Likewise, we have proposed nothing that should inhibit access to house cable by users or the vendors that service them. Therefore, house cable on the company's side of the demarcation point (house cable recorded in account 242:1) should continue to be offered pursuant to local tariff and should be accessible to users and vendors.

59. Third, several points were raised concerning our definition and detariffing of intrasystem wiring. AT&T and RTC ask that we make it clear that the detariffing of intrasystem wiring applies only to wiring installed as part of a detariffed CPE system. We believe that point was clearly made in the NPRM. However, to avoid confusion as to our intent, we reiterate that we are detariffing new intrasystem wiring installed with new CPE systems. The next point was raised by NATA and RTC. They claim that our exclusion of wiring that crosses a public thoroughfare in our definition of intrasystem wiring is too restrictive. Essentially, they believe that such wiring should be part of the intrasystem wiring if its installation is not prohibited by state or local ordinance. After reviewing this matter, we agree that the only reason for excluding this wiring was that it may be subject to state or local ordinance. Therefore, we have decided to include this wiring as part of the detariffed intrasystem subject to approval by the appropriate state or local authority. Finally, California and Tennessee suggest that embedded intrasystem wiring be included in Docket 81–893 so that problems be associated with the valuation and sale of intrasystem wiring and its associated complex business systems will be resolved. We agree with them. In fact, we stated in the NPRM that embedded intrasystem wiring would be addressed in Docket 81–893.

60. Fourth, NATA claims that ABI and the other regulated carriers should not be allowed to retain ownership in any new detariffed intrasystem wiring for the next five years. They contend that ownership in this wiring will give the above entities a competitive advantage in the CPE market. Our primary goal for detariffing intrasystem wiring is to foster competition in the same manner *Computer II* did for CPE. NATA's request would result in this Commission restraining a regulated carrier or ABI from providing customers a detariffed intrasystem wiring on a lease basis. We find noting in NATA's comments to justify such a restriction on these entities.

61. Fifth, Michigan and California raise questions about our proposal to no longer permit the recording of intrasystem wiring in account 232. Michigan suggests that the present accounting continue until after divestiture is completed to ensure that the total cost of all complex systems will have been accounted for and valued in a consistent manner. We disagree. We do not believe the detariffing of new intrasystem wiring would adversely affect the divestiture procedure any more than the detariffing of the PBX or key system which are part of an intrasystem. California asks for a clarification on the proper accounting for intrasystem wiring as it relates to Docket 79–105. It believes that Note A to account 232 requires intrasystem wiring for large PBXs to be recorded in account 234 and that the carriers have been improperly expensing this wiring. We have reviewed our accounting rules for account 232 and find no support for California's interpretation concerning Note A. First the items list for account 232 clearly requires that wires used to connect private branch exchanges, switchboards or their distributing frames with terminal stations should be recorded in account 232. This clearly applies to all PBXs and the wires we have defined as intrasystem wiring. The language in Note A that relates to account 234 covers cables from the interface with permanent house or outside cables or wires to a large PBX. These cables or wires have always been recorded in account 234 and were not affected by the expensing required in Docket 79–105. Therefore, California's interpretation that intrasystem wiring should be recorded in account 234 is incorrect.

Accounting for Network Terminating Wire

62. Our purpose in proposing to expense new installations of the terminating wire for large PBXs was to avoid recording this wire, which must be offered under tariff, in the same account with detariffed CPE. This wire is currently recorded in account 234. All of the respondents agree that network terminating wire should no longer be recorded in account 234. However the respondents suggest three modifications to our proposal.

63. The most significant modification is suggested by California, NATA, and RTC. They suggest that new network terminating wire be capitalized in outside plant accounts instead of being expensed to account 605 as we proposed. They believe this wire serves the same function as the drop wire and, therefore, should be given the same accounting classification as proposed for drop wire in Docket 82–679, 47 FR 44767 (1982). In our opinion the network terminating wire closely resembles the inside wire we expensed in Docket 79–105 rather than the drop wire. It is for this reason that we proposed to expense this wiring. Therefore, we are adopting our proposal and will require each carrier to expense all new installations of network terminating wire to account 605. It is estimated that this will add about $2 million per year to Bell System expenses.

64. The second modification is suggested by AT&T. AT&T suggests that embedded network terminating wire be handled in this proceeding and not be deferred to Docket 81–893. AT&T recommends that the embedded wire be reclassified to account 232 and amortized under the same procedures that are being used for amortization of the inside wiring subclass of account 232. We agree that embedded wiring should be handled in this proceeding. We proposed to defer this to Docket 81–893 only because we believed carriers would have problems of valuation for this wire. Moreover, we feel the other carriers can also reasonably determine the value of this wire. We are not persuaded, however, that embedded network terminating wire should be classified to account 232. We see no need to reclassify this wire from account 234. After it is separately identified, it can be amortized from account 234. Moreover, because of the *de minimus* amount involved, we find no compelling reason to apply a long ten year amortization period to this wiring. We believe a shorter five year amortization period is reasonable without any

significant impact to the ratepayer. Therefore, we will require the embedded network terminating wire to be separately identified and amortized over a five-year period from a specific subclass of account 234. It is estimated that the impact of shortening the amortization period from ten years to five years will increase Bell System expense by about $1.5 million annually.

65. The third modification is suggested by MCI. MCI suggests that network terminating wire be recorded in a separate subaccount of account 605. It contends this would provide more accurate cost data on the cost-causative ratepayer. After considering this we believe that a separate subaccount is not necessary for network terminating wire. Therefore, we dismiss the request to establish a separate subaccount in account 605.

Accounting for Sale or Lease of Detariffed PBXs or Key Systems

66. Our purpose in proposing accounting for the sale or lease of detariffed PBXs and key systems in this proceeding was to provide interim accounting instructions for these activities using existing accounts. Our primary objective was to remove these activities from accounts used in rate regulation to below the line accounts. More substantial accounting changes involving adding and deleting accounts were deferred to Docket 81-893. These instructions of course would apply only to those companies that offered CPE directly (not through a separate subsidiary). Actually, we had already provided interim accounting instructions for the sale of detariffed CPE in Docket 79-105, and we simply reiterated those instructions in this proceeding. We had not provided interim accounting guidance for the leasing of detariffed CPE, however, until the NPRM was issued in this proceeding.

67. All of the comments recommending changes in our proposal concern the inadequacy of the proposed accounts for recording unregulated activities. MCI wants separate subaccounts prescribed for both the sale and lease of detariffed CPE. NATA also wants separate subaccounts for the sale of detariffed CPE and recommends, along with UTS and NTCA, that new accounts and new instructions for leased detariffed CPE be added in this proceeding. As discussed above, however, our objective in this proceeding is to provide instructions to remove detariffed activities from the accounts for regulated service using existing below the line accounts. We believe the comments recommending new accounts, new subaccounts, or modifications of existing accounts for these activities are beyond the scope of this proceeding. New accounts are being considered in Docket 81-893. Accordingly, we are adopting our interim accounting instructions as proposed.

68. There is one remaining matter that requires discussion. USITA and AT&T believe that the reporting of detariffed leased systems on Schedule 16 of Annual Report Form M should be modified. Currently, Schedule 16 requires all items having a book cost in excess of $50,000 to be reported separately for each location. The schedule also requires detailing the date the investment was included in account 103, the book cost of property at the end of the year, and separately identifying the total revenues and the total expenses. We agree with the respondents that this detailed information about their detariffed leases is sensitive and, in any case, need not be required in disaggregated form for purposes of our regulations. Accordingly, effective with the 1983 Annual Report Form M, Schedule 16 will not require the carriers to report a detailed listing of detariffed leased systems. These detariffed leased systems are to be reported in the aggregate on one line of Schedule 16.

VI. Regulatory Flexibility Act

69. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we believe the above discussion sets forth the purpose of these amendments. Further, we certify that these accounting changes can be readily implemented by all carriers subject to Part 31 without economic impact.

VII. Ordering Clauses

70. Accordingly, it is ordered, pursuant to Section 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 220 that Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies of the Commission's Rules is amended as set forth in the attached appendix to be effective May 2, 1984. However, any company desiring to, may make such accounting changes retroactive to a date no earlier than January 1, 1983.

71. It is further ordered, that the Secretary shall cause a copy of this *Report and Order* to be served on the state Commissions.

72. It is further ordered, that Docket 82-681 is hereby terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, is amended as follows:

PART 31—[AMENDED]

1. Section 31.02-80 is amended by revising paragraph (c) to read as follows:

§ 31.02-80 Computation of depreciation rate.

* * * * *

(c) The company shall keep such records of property and property retirements as will reflect the service life of property which has been retired, or will permit the determination of service life indications by mortality, turnover, or other appropriate methods, and also such records as will reflect the percentage of salvage value, or net salvage value, as appropriate, for property retired from each class of depreciable plant. Further, account 232 will be amortized according to the schedule noted in account 232(b). (See also accounts 605 and 232 for the accounting for costs incurred in the disconnection and removal of station apparatus.) Also, the station apparatus-company used equipment for embedded equipment that costs $200 or less will be amortized according to the schedule noted in account 231(c). Finally, the large private branch exchange embedded network terminating wire will be amortized according to the schedule noted in account 234(b).

* * * * *

2. Section 31.02-82 is amended by revising the list after the introductory text and adding new Note B, Note C and Note D to read as follows:

§ 31.02-82 Classes of depreciable telephone plant.

* * * * *

Building (Account 212).
Central office equipment (Account 221).
Station apparatus (Account 231).
Station connections—inside wiring (Account 232).
Large private branch exchanges (Account 234).
Public telephone equipment (Account 235).
Pole lines (Account 241).
Aerial cable (Account 242.1).
Underground cable (Account 242.2).
Buried cable (Account 242.3).
Submarine cable (Account 242.4).
Aerial wire (Account 243).
Underground conduit (Account 244).
Furniture and office equipment (Account 261).
Other communications equipment (Account 262).

Vehicles and other work equipment (Account 264).

* * * * *

Note B.—The embedded investment in account 231 for company used equipment that costs $200 or less shall be maintained in a separate subclass. Depreciation of this subclass shall be maintained in a separate subclass of account 171, "Depreciation reserve."

Note C.—The embedded investment for network terminating wire in account 234 shall be maintained in a separate subclass. Depreciation of this subclass shall be maintained in a separate subclass of account 171, "Depreciation reserve."

Note D.—The investment in account 235 shall be maintained in two separate subclasses, "Public telephone equipment—coin-operated," and "Public telephone equipment—coinless."

3. Section 31.103 is revised to read as follows:

§ 31.103 Miscellaneous physical property.

This account shall include the company's investment in physical property other than property the investment in which is includible in accounts 100:1, "Telephone plant in service," 100:2 "Telephone plant under construction," 100:3, "Property held for future telephone use," and 100:4, "Telephone plant acquisition adjustment." It shall include the company's investment in telephone property retired and held for sale; also property such as lighting, water, power, detariffed leased private branch exchanges, key systems and station apparatus, and manufacturing plants, not incident to the company's telephone operations, and assessments against miscellaneous physical property for the construction of public improvements.

4. Section 31.124 is revised to read as follows:

§ 31.124 Merchandise and material held for sale or lease on a detariffed basis.

This account shall include the cost of all station equipment purchased for lease or resale and the cost of material and supplies held for use in the provision of repair service on customer provided equipment or equipment leased on a detariffed basis. (Note accounts 231 and 234.) The cost shall include applicable transportation charges, sale and use taxes, cash and other purchase discounts. Inventory shortages and overages shall be charged and credited, respectively, to account 316.

Note A.—The cost of material used to install and connect and maintain customer premises equipment that is provided on a resale basis shall be charged to account 316, "Miscellaneous income."

Note B.—The cost of material used to install and connect customer premises equipment that is provided on a leased basis shall be charged to account 103, "Miscellaneous physical property," or account 315, "Income from miscellaneous physical property," as appropriate.

5. Section 31.221 is amended by revising paragraph (a) and the items list and adding new Notes E, F, and G to read as follows:

§ 31.221 Central office equipment.

(a) This account shall include the original cost of electrical instruments, apparatus and equipment (including company used), other than station equipment installed on customer's premises, in central offices (including terminal and test rooms), repeater stations and test stations used in transmitting traffic and operating signals, and similar equipment in operators' schools and other centralized locations. (See also accounts 231, 232, 234 and 262.)

* * * * *

Items

Aisle-lighting equipment.
Announcement equipment—time, weather forecast, etc.
Automatic message recording equipment.
Balconies for distributing frames.
Banks—connector, selector.
Batteries.
Battery cabinets.
Boards—floor alarm, power, test, service observing.
Building alterations, minor, such as opening and closing holes in ceilings, partitions, walls and floors to permit installations of equipment, power conduit, and wiring.
Cables. (See also Notes B and E to this account.)
Calculagraphs.
Call registers.
Carrier current equipment.
Carrier line filters.
Circuit breakers.
Data sets. (See also Note G of this account.)
Desk sets, hand sets, wall sets, and combined sets, including those used at main and extension stations and the associated inside wiring. (See also Note G to this account.)
Engines, including special foundations not a part of buildings.
Facsimile equipment, including the associated inside wiring. (See also Note G to this account.)
Frames—alarm connector, decoder, decoder connector, line finder, line switch, repeater, selector, sender, test.
Fuse boards.
Fuse panels.
Generators, including special foundations not a part of building.
Jump wires.
Key indicator equipment.
Line concentrator equipment.
Line filters.
Loading coils. (See also Note C to this account.)
Loudspeaker equipment.
Main and intermediate frames.
Meters.
Motors, including special foundations not a part of buildings.
Multiplex apparatus.
Operators' transmitters.
Operators' chairs.
Operators' head sets.
Permits and privileges and rights of way for installation of externally mounted central office equipment. (Note also § 31.2-22(b)(7) and Note F to account 211.)
Platforms, not part of buildings.
Pole changers.
Power circuits for emergency use including payment for installation by others of circuits not owned.
Power panels.
Power plants.
Printer—telegraph equipment, including the associated inside wiring. (See also Note G to this account.)
Private branch exchange, including common equipment (power equipment, a switchboard or switching equipment shared by all stations), station equipment (usually telephones or key telephone systems), and wires connecting the common equipment and the station equipment plus the terminal boxes or cross connector points, and the cable or wires that connect the private branch exchange with the network interface. (See also Note E of this account.)
Protectors.
Pulse machines and tone machines.
Radio transmitting and receiving equipment.
Rectifiers.
Register cabinets.
Relay racks and coil racks.
Relay.
Repeater sets.
Rheostats.
Ringing machines, including special foundations not a part of buildings.
Rolling ladders.
Station switching and signaling devices, in large installations such as certain key systems, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, telephone sets, and wiring connecting the common equipment and the telephone sets plus the terminal boxes or cross connector points, and the cable or wires that connect the key system with the network interface. (See also Note E of this account.)
Submarine cable repeaters.
Switchboards and other electrical equipment used in operators' school.
Switchboards—Subscribers' "A" and "B" trunk, toll, dial system.
Switches—connector, line repeater, selector, repeater, test, distributor.
Tarpaulins.
Telegraph instruments and equipment.
Telephotographic equipment.
Teletypewriter switchboards and equipment.
Test boards.
Testing and routining central office equipment prior to assignment to service.
Testing equipment and tools, central office. (See also Note D to this account.)
Test tables.
Ticket holders.
Toll ticket carriers.

Traffic load counting equipment.
Turrets.
Water stills for battery service.
* * * * *

Note E.—The cost of wires or cables used for company used equipment that handles switching of customer traffic that was previously recorded in account 232 or account 234 shall be included in this account.

Note F.—The cost of company used equipment that handles official company business shall be charged to account 262.

Note G.—Company used equipment that cost $200 or less shall be charged to the appropriate expense account, including the inside wiring installed to be used with this equipment.

6. Section 31.231 is amended to revise paragraph (a) and add a new paragraph (c) and revise items list and Notes A and C read as follows:

§ 31.231 Station apparatus.

(a) This account shall include the original cost of station apparatus, including small private branch exchanges installed for customers' use. (Note also accounts 221, 235, and 262) This account shall also include the cost of material in stock which are normally used as station apparatus or additions thereto, as distinguished from items normally used for repair purposes. (Note also accounts 124, 221, 235 and 262.) Items included in this account which are normally used as station apparatus shall remain herein until finally disposed of or until used in such manner as to be includible in other accounts.
* * * * *

(c) The embedded company used equipment that costs $200 or less (Note § 31.2–20(d)) must be separately identified and amortized over a five year period. The amortization should be charged to account 608, "Depreciation," with a corresponding credit to account 171, "Depreciation reserve." In calculating this amortization, the company shall first determine the net book cost for this equipment by subtracting the depreciation reserve attributable to this equipment. This net book cost shall be divided by the number of months remaining in the five year amortization for that month. When this equipment is physically removed, sold, destroyed or abandoned, the original cost (actual or estimated average cost) carried in this account for this category of plant shall be charged to account 171. Under no circumstances shall the accumulated amortization credits to account 171 exceed the balance of the investment for this category of plant.

Items

(Note s31.01–8)

Amplifying equipment.
Answering equipment.
Attendants' cabinets.
Attendants' desks.
Backboards.
Code call units.
Code sending sets.
Data sets.
Desk sets, hand sets, wall sets, and combined sets, including those used at main, extension, private branch exchange, and private line stations, etc. (See also paragraph (c) and Note C to this account.)
Distributing frames.
Extension bells.
Facsimile equipment.
Hand-set mountings.
Messenger, and similar signalling devices.
Mobile telephone equipment.
Operators' chairs.
Operators' head sets and transmitters. (See also paragraph (c) and Note C to this account.)
Ordering receiving tables.
Order turrets.
Power equipment.
Printer—telegraph equipment.
Private branch exchange equipment—non-multiple manual and cordless switchboards and dial equipment of types designed to accommodate fewer than 100 lines and which cannot normally be expanded to more than 99 lines. (See also accounts 221 and 262.)
Program supply equipment—other than television.
Public address equipment.
Station switching and signalling devices, including apparatus cabinets, keys, key cabinets, and other devices used as parts of intercommunicating systems. (See also account 221, 234 and 262.)
Subscriber sets.
Telegraph equipment.
Teletypewriter equipment, including switching equipment. (See also accounts 221, 234 and 262.)

Note A—The cost of installation (including customers' station protectors, and wiring on the customer's side of the protector or equivalent) shall be charged to account 232, "Station connections-inside wiring," and/or account 605, "Installations and repairs of station equipment," as appropriate. (See also account 235.)
* * * * *

Note C—Operators' head sets and transmitters in central offices and at large private branch exchanges, and test sets such as those used by wire chiefs, linesmen and others, shall be included in account 221, "Central office equipment," account 234, "Large private branch exchanges," account 262, "Other communications equipment," as appropriate.
* * * * *

7. Section 31.232 is amended by revising paragraph (a) and the items list and Note A also add new note F to read as follows:

§ 31.232 Station connections-inside wiring.

(a) This account shall include the original cost of installing or connecting items of station apparatus and the original cost of inside wiring and cabling. (See also accounts 221, 235, 262 and 605.)
* * * * *

Items

(Note 31.01–8)

The wires (or small cables) from the station apparatus to the point of connection with the outside plant cable or wire facilities. (See also accounts 221, 235 and 262.)
The wires (or small cables) used to connect station apparatus in the same building, such as main stations with extension stations, and stations of intercommunicating systems. (See also accounts 221, 235 and 262.)
The wires (or small cables) used to connect private branch exchange switchboards or their distributing frames with terminal stations located in the same building. (See also accounts 221 and 262.)
The wires (or small cables) used to connect the various parts of a small private branch exchange, such as the cable or wires from distributing frames to switchboard. (See also accounts 221 and 262.)
The wires (or small cables) installed specifically to serve as trunk, battery, or generator circuits from a small private branch exchange to the point of connection with the permanent house or outside cables or wires. (See also accounts 221 and 262.)
Connecting blocks, ground wires, ground rods, station protectors, clamps, cleats, nails, screws and other material used in the installation of station apparatus and inside wiring and cabling. (See also accounts 221, 235 and 262.)
Labor and other costs incurred in connection with station apparatus and station connection installations or additions thereto.(See also accounts 221, 235 and 262.)

Note A.—Costs charged to this account prior to October 1, 1981, in connection with inside cabling are restricted to cables used in station installations instead of wires, such as those that run from wall outlets or floor terminals to the station apparatus, and to cables used in installing small private branch exchanges. (See also accounts 103, 221, 235, 262 and 316.) The cost of wires or cabling used in installing equipment includible in account 234, "Large private branch exchanges," shall be included in that account and shall not be included or in part in account 232. (See also accounts 103, 221, 262 and 316.) The cost of riser and distributing cables, including associated cross-connection boxes, terminals, distributing frames, etc. is chargeable to account 242.1, "Aerial cable."
* * * * *

Note F.—The items shown above when provided on detariffed lease or sale basis shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

8. Section 31.234 is amended by redesignating existing paragraph as (a) and add a new paragraph (b) and

revising the items list and add new Notes D, E and F to read as follows:

§ 31.234 Large private branch exchanges.

* * * * *

(b) The embedded network terminating wire, wiring that runs from the house cable terminal to the demarcation point, must be separately identified and amortized over a five year period. The amortization should be charged to account 608, "Depreciation," with a corresponding credit to account 171, "Depreciation reserve." In calculating this amortization, the company shall first determine the net book cost for this equipment by subtracting the depreciation reserve attributable to this equipment. The net book cost shall be divided by the number of months remaining in the five year amortization period to determine the appropriate amortization for that month. When this equipment is physically removed, sold, destroyed or abandoned, the original cost (actual or estimated average cost) carried in this account for this category of plant shall be charged to account 171. Under no circumstances shall the accumulated amortization credits to account 171 exceed the balance of the investment for this category of plant.

Items

(Note s31.01–8)

Cables or wires from distributing frame to switchboard.

Dial system private branch exchanges of types designed to accommodate 100 or more lines or which can normally be expanded to 100 or more lines, including any nonmultiple manual switchboards used as attendants positions in connection with such dial system exchanges.

Distributing frames.

Multiple manual switchboards.

Operators' chairs.

Operators' head sets and transmitters.

Power equipment, including special foundations.

Switching and signaling devices in large installations, such as certain key systems for governmental agencies, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, and other components of such systems.

Switching equipment at switching or relay centers of Large private line teletypewriter systems.

Television program supply equipment and other television equipment on customers' premises except portable equipment subject to use in central offices.

Wires (or small cables used instead of wires) installed specifically to serve as trunk, battery or generator circuits from a Large private branch exchange to the point of connection with the network interface jack (demarcation point).

* * * * *

Note D.—New network terminating wire shall be charged to account 605, "Installations and repairs of station equipment."

Note E.—The items shown above when provided on a detariffed lease or sale shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

Note F.—Large private branch exchanges and key systems, including the associated cable/wiring, installed for company use shall be recorded in account 221, "Central office equipment," or account 262, "Other communications equipment," as appropriate.

9. Section 31.235 is added to read as follows:

§ 31.235 Public telephone equipment.

(a) This account shall include the original cost of coin-operated and coinless telephones in separate subclasses, "Public telephone equipment—coin-operated," and "Public telephone equipment—coinless." These subclasses shall also include the original cost of the premise wiring installed for use by the public telephones.

(b) This account shall also include the original cost of operating spares that are required to provide a continuity of service for public telephones. The operating spares shall not exceed six months supply in terms of turnover and available to installers from locations in reasonable proximity to the location of the installed equipment.

Items

(Note s31.01–8)

Enclosure—a complete installation with or without booth, directory hangers and shelves, shield and public telephone signs.

Mounting (pedestal, post or wall)—a complete installation with or without a base plate.

Directory stand or shelf (in proximity to public telephones)—a complete installation with or without directory hangers.

Telephone sets—a complete item (coin-operated and credit card).

Note A.—The cost of replacing operating spares shall be charged to account 607, "Repair of public telephone equipment."

Note B.—The cost of a detariffed telephone extension installed for use with a semi-public telephone shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

10. Section 31.241 is amended by adding a Note as follows:

§ 31.241 Pole line.

* * * * *

Note.—The cost of poles that are considered part of a detariffed PBX or key system intrasystem shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

11. Section 31.242:1, is amended by adding a new Note C to read as follows:

§ 31.242:1 Aerial cable.

* * * * *

Note C.—The cost of aerial cable, including house cable that is considered part of a detariffed PBX or key system intrasystem shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

12. Section 31.242:2 is amended by adding a new Note F to read as follows:

§ 31.242:2 Underground cable.

* * * * *

Note F.—The cost of underground cable that is considered part of a detariffed PBX or key system intrasystem shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

13. Section 31.242:3 is amended by adding new Note C to read as follows:

§ 31.242:3 Buried cable.

* * * * *

Note C.—The cost of buried cable that is considered part of a detariffed PBX or key system intrasystem shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

14. Section 31.243 is amended by redesignating original Note to Note A and adding a new Note B to read as follows:

§ 31.243 Aerial wire.

* * * * *

Note B.—The cost of aerial wire that is considered part of a detariffed PBX or key system intrasystem shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

15. Section 31.244 is amended by adding a new Note C as follows:

§ 31.244 Underground conduit.

* * * * *

Note C.—The cost of underground conduit that is considered part of a detariffed PBX or key system intrasystem shall be charged to account 103, "Miscellaneous physical property," or account 316, "Miscellaneous income," as appropriate.

16. Section 31.262 is added to read as follows:

§ 31.262 Other communications equipment.

This account shall include the original cost of private branch exchange and key system intrasystems and station apparatus, including its associated inside wiring, installed for official company use. (See also account 221.)

Items

(Note § 31.01–8

Data sets including the inside wiring.

Desk sets, hand sets, wall sets, and combined sets including the associated inside wiring. This excludes such sets when used as part of a private branch exchange or key system intrasystem. (See also Note C to this account.)
Distributing frames.
Facsimile equipment including associated inside wiring.
Multiple manual switchboards.
Operators' chairs.
Operators' headsets and transmitters.
Power equipment, including special foundations.
Printer-telegraph equipment including associated inside wiring.
Private branch exchange, including common equipment (power equipment, a switchboard or switching equipment shared by all stations), station equipment (usually telephones or key telephone systems), and wires connecting the common equipment and the station equipment plus the terminal boxes or cross connector points, and the cable or wires that connect the private branch exchange with the network interface. (See also Note D to this account.)
Station switching and signaling devices in large installations, such as certain key systems, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, telephone sets, and wires connecting the common equipment and the telephone sets plus the terminal boxes or cross connector points, and the cable or wires that connect the key system with the network interface. (See also Note D of this account.)
Switching equipment at switching or relay centers of teletypewriter systems.
Teletypewriters, including associated inside wiring.

Note A.—The cost of riser and distributing cables in buildings other than central offices, which by their physical characteristics, method of installation, and permanence constitute regular house cables shall be charged to account 242:1.

Note B.—The cost of cross-connection boxes installed as a part of the house cable system, including those used as distributing frames, should be charged to account 242:1.

Note C.—Equipment that cost $200 or less shall be charged to the appropriate expense account, including the associated inside wiring.

Note D.—The cost or wires or cables used for equipment in this account that were previously recorded in account 232 or account 234 should be included in this account.

17. Section 31.6–65 is amended by adding a new account as follows:

§ 31.6–65 Operating expense accounts to be maintained.

* * * * *

Accounts for Class A Companies.

* * * * *

607 Repairs of public telephone equipment.

* * * * *

Accounts for Class B Companies.

* * * * *

607 Repairs of public telephones.

* * * * *

18. Section 31.605 is amended by revising paragraph (a), the items list and Note A as follows:

§ 31.605 Installations and repairs of station equipment.

(a) This account shall include the cost of installing items of station apparatus (included in 231) and the cost of inside wiring under either the phase-in or flash-cut approach. Under the phase-in approach this installation activity shall be charged to this account on the following basis: 25% between October 1, 1981, and September 30, 1983 50% between October 1, 1982 and September 30, 1983; 75% between October 1, 1983, and September 30, 1984; and 100% after September 30, 1984. Under the flash-cut approach all costs of installation activity shall be charged to this account. Carriers shall maintain the cost of installing wiring under either of the above approaches in a separate subaccount. This account shall also include the cost of reconnecting customers' lines at customers' premises (Note also account 103, account 232 and account 316).

* * * * *

Items

(Note 31.01–8)

The wires (or small cables) extending from the point of connection with (1) terminal boxes of house cables or (2) protectors or other terminating devices of service wires to customers' station apparatus or terminal equipment.
The wires (or small cables) used to connect customers' station apparatus in the same building, such as main stations and extension stations, and stations of intercommunicating systems.
The wires (or small cables) used to connect customers' small private branch exchange switchboards or their distributing frames (or equivalent distributing panels) with terminal stations in the same building.
The wires (or small cables) used to connect the various parts of a customers' small private branch exchange, such as the cables or wires from distributing frames (or equivalent distributing panels) to switchboards.
The wires (or small cables) installed specifically to serve as trunk, battery, or generator circuits from a customers' small private branch exchange to the point of connection with the permanent or service wires.
The wires (or small cables) installed specifically to serve as trunk, battery, or generator circuits for private branch exchanges from the point of connection with the permanent house cable of service wires up to and including the network interface.
Connecting blocks, jacks, ground wires, station protectors, clamps, cleats, nails, screws, and other material used in the installation of customers' station apparatus and inside wiring.
Labor and other costs incurred in connection with customers' station apparatus and wiring installations or additions thereto.
Changing customers' inside wiring.
Changing type of customers' telephone, such as from nondial to dial or from one color to another.
Cleaning customers' station apparatus and large private branch exchange equipment.
Connecting or installing customers' station apparatus.
Disconnecting customers' lines at customers' premises at the System Network Interface or equivalent. (See also accounts 602:2, 602:4 and 604.)
Disconnecting or removing customers' station apparatus.
Inspecting, testing, and reporting on condition of customers' equipment to determine the need for repairs and replacements. (See also account 603.)
Material normally used as repair parts for customers' station apparatus.
Moves or relocations of items of customers' station apparatus.
Number plate changes.
Plant dispatch and completion and related clerical work (e.g., service order dispatch, service order final completion).
Reconnecting customers' lines at customers' premises at the System Network Interface or equivalent. (See also accounts 602:2, 602:4 604.)
Removing customers' inside wiring.
Removing sediment from and cleaning batteries.
Repairing used customers' station equipment for reuse.
Replacing defective customers' station apparatus.
Replacing dry-cell batteries.
Replacing minor items of customers' large private branch exchanges, including labor and material used and the removal and recovery of the items retired less salvage recovered, except when such items are replaced through the replacement of retirement units. (Note also § 31.2–25.)
Replacing one customers' small private branch exchange with another.
Supply expense applicable to customer station apparatus being reused.
Testing for, locating and clearing trouble in customers' station apparatus and large private branch exchanges. (See also account 603.)

Note A.—Costs chargeable to this account in connection with inside cabling are restricted to cables used in station installations instead of wires, such as those that run from wall outlets or floor terminals to the station apparatus, and to cables used in installing small private branch exchanges. The cost of wires or cabling used in installing equipment includible in account 234, "Large private branch exchanges," *other than* those installed specifically to serve as trunk, battery, or generator circuits for large private branch exchanges from the point of connection with the permanent house cable or service wires, up to and including the network interface jack, shall be included in

account 234. The cost of house cable, including associated cross-connection boxes, terminals distributing frames, etc. is chargeable to account 242.1, "Aerial cable."

* * * * *

19. Section 31.607 is added to read as follows:

§ 31.607 Repairs of public telephone equipment.

This account shall include the cost of repairs of public telephone equipment. (Note also account 632.) Carriers shall maintain the cost of repairs for coinless public telephones in separate subaccounts.

Items

(Note § 31.01–8)

Cleaning public telephone equipment.
House service for public telephone equipment.
Inspecting, testing, and reporting on condition on equipment to determine the need for repairs or replacements. (See also account 603.)
Materials normally used as repair parts for public telephone equipment.
Moves or relocations of items of public telephone equipment (within the same accounting area).
Repainting and other repairs of booths, including those owned by others.
Repairing used public telephone equipment for reuse.
Replacing defective public telephone equipment (labor only). (See Note A of this account.)
Supply expense applicable to public telephone equipment.
Testing for, locating and clearing trouble in public telephone equipment. (See also account 603.)

Note A.—The material cost of operating spares shall be charged to account 235. However, the installation labor and repair cost of this equipment shall be charged to this account.

20. Section 31.608 is revised to read as follows:

§ 31.608 Depreciation.

This account shall include the amount of depreciation charges applicable to the accounting period for all classes of depreciable telephone plant, except amounts chargeable to clearing accounts. The depreciation charges shall be made in accordance with §§ 31.02–8 to 31.02–82 and 31.2–23(c). This account shall also include the amount of amortization of station apparatus, station connections, and network terminating wire. (Note accounts 231, 232 and 234 for amortization schedules; note accounts 315 and 174 for depreciation of miscellaneous physical property.)

21. Section 31.8 is amended by revising subsection 221 Central Office Equipment and adding new subsections 235 Public Telephone Equipment and 262 Other Communications plant.

Retirement Units

§ 31.8 List or retirement units.

* * * * *

221 Central Office Equipment

Switchboards, desks and testboards:
Switchboards (i.e., local, toll, dial system "A", cordless "B", call distributing "B", observing, teletypewriter, etc.)—a complete section or lower unit.
Desks (i.e., operating, observing, testing, etc.)—a complete section.
Testboards, or test and control boards (board type)—a complete section.
Testboards, or test and control boards (rack type):
All the equipment in one bay.
A complete upper unit.
A complete lower unit.
A complete installation or rack framework for one board.
Test panels—a complete panel.
Test cabinets—a cabinet complete with equipment.
Distributing frames:
Main distributing frames (including wall type)—a complete installation for one central office (in multi-unit offices, for one operating unit).
Intermediate distributing frames—a complete installation for one central office (in multi-unit offices, for one operating unit).
Mezzanine balconies—a complete installation for one frame.
Racks:
Relay rack equipment:
A panel or unit complete with equipment.
All the equipment in one bay, exclusive of any panels or units.
Coil rack equipment—all the equipment on one shelf.
Message and traffic register rack equipment—all the equipment in one bay.
Iron framework—a complete line of rack with or without enclosing cabinet or case.
Cable:
All of the cables in one run used for the same purpose, such as between:
(1) Main frame and intermediate frame for subscribers' lines.
(2) Main frame and intermediate frame for outgoing trunk multiple.
(3) Intermediate frame and connector frame or final frame for subscribers' lines.
(4) Intermediate frame and answering jacks.
(5) Intermediate frame and switchboard for outgoing trunk multiple jacks.
(6) Intermediate frame and switchboard for multiple jacks.
Iron framework—a complete installation of rack for one cable run.
Power equipment:
Frame or rack-mounted equipment:
A panel or shelf complete with equipment, such as fuses, meters, control equipment, etc.
Iron framework—a complete line of frame or rack for one fuse board, one power switchboard, etc.
A generator, motor, motor-generator set, gas engine, rectifier, ringing machine, harmonic converter, pole changer, interrupter, power filter, or choke coil.
Storage batteries:
A complete battery with or without rack, cabinet, or counter electric motive force cells.
All positive or all negative plates in an entire battery, i.e., in all cells of a 24 volt battery, in all cells of a morse battery, etc.
All tanks or all jars of an entire battery.
A complete battery rack or cabinet, storage or dry.
A complete group of bus bars, cable, or wiring (with or without conduit) such as between battery and fuse panel, or between power switchboard and machines.
Telephone repeater equipment (including testing equipment):
A complete floor mounted rack type set.
Relay rack mounted equipment:
A panel or unit complete with equipment.
All the equipment in one bay, exclusive of any panels or units.
Coil rack mounted equipment—all the equipment on one shelf.
Iron framework—a complete line of rack.
Carrier equipment (telephone, telegraph, repeater, and testing equipment):
A complete floor mounted rack type set.
Relay rack mounted equipment:
A panel or unit complete with equipment.
All the equipment in one bay, exclusive of any panels or units.
A line filter.
A complete test table.
Iron framework—a complete line of rack.
Telegraph equipment (printer and manual):
Telegraph testboard—a complete section or bay.
Duplex, single line telegraph, and polar repeaters—a table or bay complete with equipment.
Metallic telegraph repeaters:
A complete floor mounted rack type set.
A panel or unit complete with equipment.
Voice frequency carrier equipment—a panel or unit complete with equipment.
Voice frequency carrier battery supply apparatus:
A complete bay of equipment.
A complete test table.
Iron framework—a complete line of rack.
Telephotograph equipment:
Table-mounted sending or receiving equipment:
A table complete with equipment.
A complete optical system.
A complete mechanical system.
A complete fork box.
A complete amplifier-modulator box.
Rack-mounted sending or receiving equipment:
A panel complete with equipment.
All the equipment in one bay.
Iron framework—a complete line of rack.
Power equipment:
A complete power board.
A complete storage battery.
Photographic equipment:
A copying camera or a copying, enlarging, and reducing camera, each with or

without associated stands, illuminators, and copy boards.
A print machine.
A drying cabinet.
A developing, fixing, and washing tank.
Radio equipment—a complete transmitter and receiver.
Miscellaneous equipment:
A calculagraph, a master clock, or a secondary clock.
Electrically driven calculagraph and clock systems—a complete installation.
Mechanical or pneumatic tube ticket distributing system—a complete installation.
Each complete tool or portable test set the original cost of which was charged to the telephone plant account, such as a plug remover and attacher, cam aligning fixture, multiple bank resetting gauge, or shaft straightening tool, a relay adjusting set, line-finder set, or wagon-type set.
Each complete item of furniture or other miscellaneous equipment, the original cost of which was charged to the telephone plant account, such as a desk or table equipped with central office equipment, an operator's chair, a complete switchboard platform, an operator's telephone set cabinet, a rotary file or directory cabinet, a ticket cabinet or rack, a tarpaulin with or without cabinet, a portable service-observing cabinet, or a holding-time recorder.
Loud speaker equipment—a complete installation.
Aisle-lighting equipment—a complete installation on one floor.
Rolling ladders—a complete installation for one side of one frame or rack.
Message and traffic register cabinets—a cabinet complete with equipment.
Telephone sets including associated inside wiring—a complete item.
Facsimile sets including associated inside wiring—a complete item.
Teletypewriter sets including associated inside wiring—a complete item.
Private branch exchange, including common equipment (power equipment, a switchboard, or switching equipment shared by all stations), station equipment (telephone sets), and wires connecting the common equipment and the station equipment plus the terminal boxes or cross connector points, and cable or wires that connect the private branch exchange with the network interface—a complete item.
Station switching and signaling devices in large installations, such as certain key systems, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, telephone sets, and wires connecting the common equipment and the telephone set plus the terminal boxes or cross connector points, and the cable or wires that connect the key system with the network interface—a complete item.
Panel dial system equipment:
A complete equipment frame such as line-finder frame, line-switch frame, selector frame, link frame, routine test frame, decoder frame, sender frame, or floor alarm board.
Pulse-machine equipment—a complete pulse machine.
Pulse-machine control apparatus—a complete installation controlling a set of pulse machines.
Step-by-step dial system equipment—a complete equipment frame, such as a line-finder frame, line-switch frame, selector frame, connector frame, or repeater frame.
Key-indicator equipment or key-pulsing equipment—a complete equipment frame, such as a link or sender frame.

Note.—When a substantial expenditure is incurred in the replacement of minor items that are parts of a retirement units in a central office or at a large private branch exchange (apart from the replacement of the retirement units with which their cost is associated) for the purpose of improving or changing the type of equipment or its method of operation, the material installed and retired and the labor and incidental costs involved in replacing the minor items shall be handled through the telephone plant and depreciation reserve accounts.

* * * * *

235 Public Telephone Equipment

Housing—a complete installation with or without booth, directory hangers and shelves, shield and public telephone sign.
Pedestal—a complete installation with or without a base plate.
Shelf in proximity to public telephones—a complete installation with or without directory hangers.
Telephone set—a complete item.

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262 Other Communications equipment

Units specified under subsection 221 Central office equipment of this section.

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[FR Doc. 83-29704 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 81, 83, and 87

Editorial Amendment of Rules Governing Stations on Land and on Shipboard in the Maritime Services, the Alaska Fixed Service, and the Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an instruction in final regulations implementing editorial amendments to the FCC's rules relating to Stations on Land and on Shipboard in the Maritime Services the Alaska Fixed Service and the Aviation Service. The codified text appeared correctly in the **Federal Register** on Monday, October 3, 1983. However, instruction 6 was incorrect. It failed to mention that §§ 81.602 and 81.605 were removed, and it erroneously stated that § 81.602 was revised.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau (202) 632-7175.

Erratum

In the Matter of Editorial Amendment of Parts 81, 83, and 87 of the FCC's Rules and Regulations.

Released: October 27, 1983.

On September 22, 1983, the Commission released an Order (FCC mimeo 6513) in the above-captioned proceeding. It was printed in the **Federal Register** on October 3, 1983, 48 FR 45114. The order was incorrect in instruction #6. It failed to mention that §§ 81.602 and 81.604 were removed, and it erroneously stated that § 81.602 was revised (48 FR 45115, middle column). The instruction #6, which pertains to Subpart P of Part 81, is corrected to read as follows:

6. Subpart P is amended by revising the heading and adding new center headings; by redesignating § 81.603 as § 81.625 and adding new § 81.603; by adding new §§ 81.609–81.623; by revising §§ 81.601 §§ 81.607; by adding a new § 81.605; and by removing §§ 81.602 and 81.604 as follows:

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 83-29685 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 48, No. 213
Wednesday, November 2, 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; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain order provisions affecting the regulatory status of milk bottling plants under the order. The proposed action, which would apply during November 1983 through March 1984, was requested by the operator of a distributing plant that is regulated under the order. The proposal would reduce the percentage of a distributing plant's receipts that must be disposed of on routes from 50 percent to 40 percent to qualify such a plant as a pool plant. The proponent contends that the suspension is needed to maintain pool status for its plant because route dispositions have been reduced due to closings of grocery stores during a labor strike.

DATE: Comments are due on or before November 9, 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 and the inclusion of November 1983 in the suspension period if this is found necessary. The initial request for the action was received on October 25, 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 would continue to have all of their milk deliveries 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 November 1983 through March 1984.

In § 1036.7(a)(1), the words "50 percent (", and the words, "for each month of April through August)".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after 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 and include November 1983 in the suspension period if this is found necessary.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension for November 1983 through March 1984 would reduce the percentage of a distributing plant's receipts that must be disposed of on routes from 50 percent to 40 percent to qualify such a plant as a pool plant. The proposed action was requested by Hawthorn Mellody, Inc., for its Brookfield Dairy plant, which is regulated under the order. Proponent claims that such plant will be unable to meet the minimum route disposition requirement for pool plant status under the order in November 1983 because a strike has closed several grocery stores that buy a significant portion of the plant's fluid milk products.

Proponent anticipates that the stores may be closed for quite some time. For that reason, he asks that the minimum route disposition percentage for distributing plant qualification be lowered from 50 percent to 40 percent of the plant's receipts from November 1983 through March 1984.

Proponent claims that his distributing plant will be unable to pool all of the milk of the individual dairy farmers associated with the plant unless the suspension is granted. He indicated that pool plant status could otherwise be maintained only by withholding from the pool substantial quantities of milk produced by individual dairy farmers. The handler claims that this procedure would be costly to him. Also, depooling the milk of certain dairy farmers would be disruptive to his overall procurement practices, he states. The requested suspension would avoid development of such uneconomic and disorderly marketing conditions, according to proponent.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on October 31, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-29834 Filed 11-1-83; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is considering amending its rules of practice to change the NRC staff's role as a full party in administrative adjudicatory hearings in initial licensing proceedings for nuclear power reactors. This advance notice of proposed rulemaking is being issued to invite advice and recommendations on several proposals which are under active consideration and on a series of related questions to help the NRC decide whether and to what extent changes should be made in the NRC staff's present role. The proposals described in this notice may change in light of the comments received.

DATES: The comment period expires December 2, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-7678.

SUPPLEMENTARY INFORMATION:

Background

In November 1981, a Regulatory Reform Task Force composed of senior NRC Personnel was established to review the reactor licensing process of the Nuclear Regulatory Commission. Instructed to develop and make recommendations to the Commission on possible actions, administrative as well as legislative, which could be taken to improve the effectiveness of the licensing process in both the near term and over the longer range, the Regulatory Reform Task Force was asked to consider the following objectives:

—To create a more effective and effective vehicle for raising and resolving legitimate public safety and environmental issues regarding the applications under review,

—To develop means for more effective future use of NRC resources in the licensing of new plants,

—To avoid regulatory uncertainty and placing unjustifiable economic burdens on utilities that may wish to build a nuclear plant (and their rate payers),

—To accomplish the above without impairing protection of public health and safety.

An extensive review system to consider the recommendations of the Regulatory Reform Task Force was also devised. In November 1981, chairman Palladino appointed a Senior Advisory Group to assist him in reviewing materials presented by the Task Force. In March 1982, an Ad Hoc Committee for Review of Nuclear Reactor Licensing Proposals, made up of representatives from industry, public interest groups and state governments, was formed. The review process called for the recommendations of the Task Force to be presented first to the Senior Advisory Group and then to the Commission. After presentation to the Commission, the recommendations were to be forwarded to the Ad Hoc Committee so that its members could review the recommendations and submit a report to the Commission. After the Ad Hoc Committee filed its report, the Commission would determine a course of action.

Since November 3, 1982, when the Regulatory Reform Task Force submitted its draft report [1] to the Commission, the Commission has been meeting periodically to consider the topics covered by the draft report. The Ad Hoc Committee recently filed its final report on the administrative reform proposal. On July 13, 1983, the Commission held a public meeting to discuss a proposal, outlined in Chapter 6 of Part I of the Task Force draft report, to amend Commission policy on participation of NRC staff in initial licensing proceedings. The Commission decided to publish this advance notice of proposed rulemaking outlining its concerns, describing in general terms several possible approaches which are under active consideration, and inviting suggestions and public comments. Following review and analysis of the responses received, the Commission will determine whether and to what extent the NRC staff's present role as an advocate in initial licensing proceedings should be changed and the manner in which its Rules of Practice should be revised.

The Role of the NRC Staff in Adjudicatory Licensing Hearings and the Need for Change

In a proceeding for the issuance of a permit to construct or a license to operate a nuclear power reactor, the license applicant has the burden of showing that it can contruct and operate the plant safely. During the course of the licensing proceeding, an intervenor may challenge the applicant. The NRC staff has no stake in the issuance of the license, a circumstance which has led some persons to conclude that there is no need for NRC staff participation in a licensing hearing. However, the Commission relies heavily on the staff's special expertise in determining whether the applicant has met the requirements for issuance of a license and what conditions the license should contain.

The type of hearing used in NRC licensing proceedings is adversarial in nature and requires that all parties, including the NRC staff, advocate specific positions on a variety of issues. The NRC staff makes every effort to address each issue in a fair and objective manner to ensure that the radiological health and safety of the public will be adequately protected. When the staff's participation in the hearing process lends support to the case in favor of the application, however, an impression is created among some members of the public that the NRC staff is advocating the applicant's case. As a consequence, the credibility of the Commission as an impartial and objective regulatory agency has been questioned. This perception of partiality has contributed to an erosion of public confidence in the safety of nuclear power plants.

Under the Atomic Energy Act of 1954, as amended, the function of the Nuclear Regulatory Commission and its staff is to protect the radiological health and safety of the public. In carrying out its duties as a full party in a contested licensing proceeding, the NRC staff must satisfy this statutory obligation to represent and protect the public interest. In view of the importance and highly technical nature of the safety issues which must be considered in determining whether, or under what

[1] SECY-82-447, November 3, 1982, transmitting the draft report of the Regulatory Reform Task Force to the Commission for appropriate action. This document has been placed in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555, where it is available for inspection and copying for a fee.

conditions, to license a nuclear power plant, the Commission is concerned whether participation by the NRC staff as an advocate in individual licensing proceedings, is the most effective method of achieving this objective. It is conceivable that the interest of the public in securing adequate radiological health and safety protection might be better served, and the expertise of the NRC staff better used, if staff resources now committed to litigating admitted contentions in individual licensing proceeding were reduced and more staff resources were made available for the study, analysis and resolution of other important noncontested matters involved in particular proceedings and generic safety questions common to one or more classes of light water reactors. A separate, but related, concern is whether limiting the participation of the NRC staff in individual licensing proceedings will mitigate in any meaningful way the legal constraints placed on the Commission's access to and use of NRC staff expertise by the separation of functions requirements of the Administrative Procedure Act.[2]

Proposals Under Consideration

The Commission is actively considering several proposals for restructuring the role of the NRC staff in formal administrative adjudications[3] in contested initial licensing proceedings.

Option 1

The first proposal would alter the NRC staff's current role as a full party in all formal licensing adjudications by limiting staff participation as a party in contested initial licensing proceedings to those controverted factual issues on which it disagrees with the technical bases, rationale or conclusions of the license applicant or other parties in the proceeding. This proposal would also permit the staff to act as an *amicus* in these proceedings. As an *amicus*, the staff would be able to advise presiding officers on the record regarding any other matter in the proceeding, either on its own initiative or upon request of the presiding officer. The proposal would not change the NRC staff's role as a full party in other types of proceedings, such as enforcement matters.

Under Option 1, the staff would become a party to contested proceedings involving initial licensing on a discretionary basis. If the staff disagrees with a party's technical basis, rationale or conclusions, the staff could provide notice to the parties and introduce evidence at the hearing articulating its position and its basis for disagreement. In this way, the staff would become a party to the proceeding, but only with respect to the particular issue(s) on which it elected to participate. Other parties would have an opportunity to rebut the staff's evidence. Cross-examination by and of the staff would also be permitted to the extent otherwise allowed by the Commission's Rules of Practice.

With respect to Option 1, several points should be emphasized. First, Option 1 would apply only to initial licensing proceedings. Initial licensing would include any formal proceeding on an application for a construction permit, operating license, or any other license for a facility or other activity, including any amendment or modification. Normally excluded from initial licensing would be proceedings involving the renewal, revocation, suspension, annulment, withdrawal or agency-initiated modification of licenses. Thus, under Option 1, the staff would remain a full party in all agency enforcement actions and in all license renewal and withdrawal proceedings.

Second, Option 1 would permit discretionary participation by the staff on one or more issues in a proceeding. There may be instances where the public interest would be better served through staff participation as a party. For example, the staff may take exception to a methodology, analysis or conclusion of a party and, therefore, may find it necessary to function as a formal party on selected issues in order to fully develop the record. The frequency of staff participation as a party in such instances would depend on the standards chosen to govern such participation. Within that constraint, this provision would give the staff the flexibility to carry out the agency mission as circumstances may require.

Third, under Option 1 the staff would become a party to the proceeding only with respect to the particular issue(s) on which it elected to participate. Thus, while the staff would submit evidence, file proposed findings of fact, take appeals, and otherwise exercise party rights on matters relating to those elected issues, the staff would not participate on other matters, except to a limited extent as an *amicus*.

In addition to permitting the staff to become a party to an initial licensing proceeding on a particular issue, Option 1 would permit the staff to participate in the proceeding to a limited extent as an *amicus*. In this capacity, the staff could provide on-the-record advice "on any matter in the proceeding" to the presiding officer, either on its own initiative or at the request of the presiding officer. The staff and presiding officers would have great flexibility in providing or requesting advice. The only exception would be that such advice could not be requested or provided concerning issues on which the staff was already participating as a party

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[2] 5 U.S.C. 554(d) states: "The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) Consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative of prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) In determining applications for initial licenses;

(B) To proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) To the agency or a member or members of the body comprising the agency."

[3] The Nuclear Regulatory Commission and its predecessor agency, the Atomic Energy Commission, have consistently taken the position that reactor licensing proceedings, which are subject to the hearing provisions of section 189a. of the Atomic Energy Act of 1954, as amended, are on-the-record adjudications under the applicable provisions of the Administrative Procedure Act (5 U.S.C. 554, 556 and 557).

Section 189a.(1) of the Atomic Energy Act of 1954, as amended, provides: "In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the **Federal Register**, on each application under section 103 or 104b. for a construction permit for a facility, and on any application under section 104c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absense of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the **Federal Register** of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration."

because of a disagreement with the license applicant or other party.

While *amicus* advice on any procedural or substantive matter pending before a presiding officer would be permitted, such advice would not necessarily be offered or solicited routinely. The Commission could direct that the *amicus* mechanism be used sparingly for unusal, important or complex questions in which the staff perspective could be of significant benefit to the presiding officer. For example, a presiding officer may wish to request staff views on the merits of a motion for summary disposition which concerns a key issue in a proceeding, or the staff may wish to provide its views to a presiding officer when it believes that a particular procedural request or substantive issue may have significant implications for other proceedings or invites an unwarranted departure from past practice. Formal cross-examination of staff members could be provided, or the parties to the proceeding could be given a reasonable opportunity to comment on the staff's views.

Under Option 1, the staff would continue to be served with all documents filed in the proceeding, regardless of whether the staff participates as a party or acts as an *amicus*. However, the Commission's formal procedural rules governing the staff's participation, including the deposition of named NRC employees and the answering of interrogatories by NRC personnel, could be used to reach the staff concerning only those issues on which the staff participates as a party. Any ACRS report, safety evaluation report or environmental impact statement relating to the proceeding might be deemed to be admitted as part of the hearing record of the proceeding without the formality of being offered into evidence by the NRC staff. Or, the staff could be required to respond to discovery requests on these documents, and to provide witnesses to sponsor the documents and to respond to cross-examination.

Option 2

Like Option 1, Option 2 would apply only to initial licensing proceedings. The staff would remain a full party in all agency enforcement actions and in all license renewal and withdrawal proceedings. Under Option 2, however, the role of the NRC staff in initial licensing proceedings would be structured somewhat differently in order to permit the staff to carry out its primary function in those proceedings; namely, to assist in the development of a full and balanced record. In this way, the staff would help the Licensing Board and the Commission to make a sound determination in the case—the kind of determination that would foster greater public confidence in the level of protection provided with respect to radiological health and safety matters.

In order to accomplish these objectives, the NRC staff would cease to function as an advocate in initial licensing proceedings. Under Option 2, the NRC staff would not be involved in the resolution of any procedural matters, including, for example, such matters as the standing of persons to participate in the proceeding, qualifications of witnesses and the relevance of testimony. Nor would the NRC staff be involved in the selection and formulation of contentions or in the preparation of proposed findings of fact or conclusions of law.

Once the contentions have been formulated and the issues joined in a particular proceeding, however, the NRC staff would be required to supply views and analyses for the record on every substantive issue raised. Neither the staff nor the Licensing Board would have any discretion in selecting issues on which the staff would present evidence. All substantive issues to be considered in the hearing would have to be addressed. The NRC staff would be required to respond to discovery requests, would be subject to cross-examination and would be permitted to cross-examine witnesses of other parties who challeged the staff's analyses. Although the NRC staff would be permitted to submit views respecting possible license conditions, it would be precluded from providing formal findings of fact and conclusions of law. Instead, the applicant and the intervenor, as the parties in dispute, would be responsible for preparing proposed findings of fact and conclusions of law. Responsibility for summarizing the record in the proceeding and for making the requisite factual findings and legal conclusions to support the decision reached would rest in each case with the Licensing Board.

Option 3

Option 3 would be to retain the staff's existing role in the licensing process. The staff would continue to function as a full party advocate on all aspects of initial licensing proceedings. This option could be implemented without any modification of existing practice. Alternatively, it could be coupled with measures designed to improve public perception of the staff's role (as, for example, in Option 4 below) or to allow greater Commission access to staff expertise, consistent with applicable law.

Option 4

Option would involve expanded public involvement in initial licensing proceedings before a notice of opportunity for hearing is issued. This option could be used in combination with any of the first three options. It would require that, whenever the applicant and staff met to discuss various aspects of the license application and to resolve their differences, notice of the meeting would be provided and interested persons would be permitted to attend. Meetings would be held in places convenient for interested members of the public; *i.e.*, near the proposed plant site rather than at Commission headquarters. Interested persons would be permitted to identify and discuss issues of particular concern regarding the application and to ask questions of the applicant and staff. Thereafter, the staff would address those questions and concerns in a section of its Safety Evaluation Report, much as it now discusses comments received on its environmental analaysis in the Environmental Impact Statement.

This option would allow interested members of the public to observe the staff's initial review of the application and to contribute to the process of negotiating with the applicant for various changes that may be considered desirable. It would likely contribute to increased public understanding of the staff's role. It could also provide useful information about local and site-related concerns in a non-adversarial setting.

Questions and Concerns

In its preliminary consideration of the role of the NRC staff in initial licensing hearings, the Commission has identified several matters relating to the NRC staff's responsibility to the public and to the basic fairness and integrity of the licensing proceeding which it believes warrant careful study and should be taken into consideration in assessing the strengths and weaknesses of any specific proposal. Advice and recommendations on the relevance and relative importance of these matters and on any other points considered pertinent are invited from all interested persons. comments and supporting reasons are also requested on the extent to which Options 1 and 2, or any suggested alternative proposal, might provide a constructive response to these concerns. Responses to the following questions are particularly requested.

General

1. What should be the role of the NRC staff in initial licensing proceedings? Why?

2. Should the staff present its views on all aspects of the proceeding?

a. Does the staff have a public obligation to do so?

b. Is the staff's participation necessary to develop a sound record for decisionmaking?

3. What role for the NRC staff would make the most effective use of staff resources?

4. What do commenters believe is the public's perception of the staff's role in the licensing process? Would any of the proposed options help to improve that perception?

5. Would changes in the staff's role be useful in alleviating legal constraints on the Commission's access to staff expertise on contested issues?

Option 1

1. Should the staff be accorded the discretion to choose those substantive issues on which it will participate in initial licensing proceedings?

a. What criteria should the staff use in determining on which issues it will participate?

b. If the staff does not choose to participate, what would be the status of staff-prepared documents in those proceedings—for example, the SER and the EIS? Should the staff's licensing review documents be treated as evidence and always entered into the record of the proceeding? Should the staff have to provide witnesses to sponsor those documents? Should parties be permitted to examine those witnesses? Should parties be able to obtain discovery on information covered in those documents?

c. To what extent and under what conditions should discovery be permitted against the staff?

d. Should members of the staff serve as witnesses in the hearing—either as Board witnesses or as witnesses for a party?

e. If the Commission consults staff members concerning contested issues on which the staff is not a "party", what legal constraints would there be on the relationship of those staff members to the parties? to other staff members? to the Licensing Board?

2. Should the staff serve as an informal or formal advisor to the licensing board on contested issues on which it does not participate as a party?

a. How formal should the staff's participation be? Should staff members serve as board witnesses? Should they provide their advice in writing?

b. Should parties be able to question or dispute that advice? obtain discovery on it? cross-examine staff witnesses?

c. If the staff advises the licensing board, are there any legal constraints on the relationship of those staff members to the parties? to the Commission? to other staff members?

3. What should be the staff's role on appeal?

Option 2

1. If the staff remains a party in initial licensing proceedings, should it take a position on procedural issues?

a. Should the staff be given the discretion to choose on which procedural issues it will provide views?

b. Should the Commission establish criteria to guide the staff on when to participate on procedural issues? What should they be?

c. Should the staff participate in the formulation of contentions?

d. Should the staff be required to file proposed findings of fact and conclusions of law?

2. What should be the staff's role on appeal?

Option 3

1. Can steps be taken to improve the public's perception of the staff's role in licensing proceedings without altering the staff's existing role as an advocate?

Option 4

1. Should the Commission provide an opportunity for greater public involvement in the early states of licensing proceedings?

2. How might that approach affect public perception and acceptance of the staff's role? negotiations between the applicant and staff concerning the application? resolution of contested aspects of the application?

Availability of Reference Documents

In recent years, several studies and reports have been written, both within and outside NRC, re-examining the NRC staff's role in the adjudicatory licensing process. Commenters are invited to examine the following documents which fall within the scope of and are particularly pertinent to the topic addressed in this advance notice of proposed rulemaking.

1. NUREG–0292, "Nuclear Power Plant Licensing: Opportunities for Improvement," June 1977.

2. Marcus A. Rowden, Report: *Achieving a More Effective Licensing Process—Basic Reform Withing Existing Law*, Atomic Industrial Forum, 6–8 November, 1981.

3. NRC Office of General Counsel, *Study of NRC Staff's Role in Contested Nuclear Power Reactor Initial Licensing Proceedings*, June 3, 1982.

4. Draft Report of the Regulatory Reform Task Force, November, 1982.

5. Final Report of the Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals on The Administrative Reform Proposals of the Regulatory Reform Task Force, July 12, 1983.

These documents have been placed in the Commission's Public Document Room at 1717 H Street, NW., Washington, D. C. 20555 where they are available for inspection and copying for a fee.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

The authority citation for this document is: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201).

Dated at Washington, D.C., this 27th day of October, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc–83–29742 Filed 11–1–83; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–83–10]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the

inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before January 3, 1983.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn. Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on October 27, 1983.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
23751	Bell Helicopter, Textron Inc.	*Description of Petition:* To amend registration marks requirements as follows: (1) FAR 45.27(a) be amended to read ". . . horizontally on both side surfaces (tailboom) the marks . . ." (2) FAR 45.29(b)(3) be amended to read ". . . must be at least six inches high. . . ." (3) FAR 45.29(f) be amended to read "If the surface authorized for displaying required markes under 45.25 is not large enough for displaying the required marks under 45.25, then marks as large as practicable shall be displayed." *Regulations affected:* 14 CFR 45.27(a), 45.29(b)(3), and 45.29(f) *Petitioner's reason for rule:* By imposing this 12-inch registration number on helicopters there has been a significant economic impact on a substantial number small entities. Further, there are in excess of 9,000 helicopters being operated in the U.S. by operators meeting the criteria for small entities. Our analysis of this cost for compliance by helicopter owners is in excess of $9,000 per aircraft. Of this amount $3,000 to $5,000 is attributed to the industrial designer for development of the paint scheme and $6,000 is for the repaint of the aircraft. We believe that these are significant costs to us, the manufacturer, and to the thousands of operators using Bell products. Six-inch high N-Numbers located on the tailboom would establish a commonality throughout the aerospace industry for both rotorcraft and fixed wing, which would obviously be beneficial for easy identification to both air traffic personnel and the general public. Standardizing the registration numbers on the tailboom would also result in increased commonality with Foreign Government requirements further reducing both foreign and domestic operator hardships in renumbering and repainting cost associated with the transfer of aircraft across international boundaries.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
None this period		

[FR Doc. 83-29723 Filed 11-1-83; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 10

Temporary Licenses; Statutory Disqualification From Registration; Notice of Statutory Disqualification and Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Futures Trading Act of 1982 ("1982 Act") amended the registration provisions of the Commodity Exchange Act ("Act") to provide the Commission with greater flexibility in the administration of its registration program. Specifically, the Act, as amended, authorizes the Commission to grant temporary licenses to qualified applicants for a period not to exceed six months and, in addition, establishes a new system of "statutory disqualifications" which enumerate the most important bases for finding applicants or registrants unfit for registration. These statutory disqualification standards are particularly important in connection with any temporary licensing program in that they will permit the Commission staff to determine, generally on the face of an application, whether the applicant qualifies for a temporary license.

The Commission is thus proposing regulations to implement these new provisions of the Act. In accordance with Congressional expectations, the proposed rules with respect to the statutory disqualification provisions of the Act will promote fairness and uniformity of treatment by providing applicants and registrants with advance notice of the most significant standards for disqualification used by the Commission and the likely regulatory response to the existence of such standards. Moreover, as also intended by Congress, the Commission's staff in most cases will no longer bear the burden of establishing what conditions warrant a Commission finding of unfitness. Therefore, the amount of time and resources which the staff, as well as applicants and registrants, currently devote to registration cases should be correspondingly reduced.

The Commission is also proposing to adopt certain technical and conforming amendments to its existing registration rules contained in Part 3 and Part 10 of the Commission's regulations.

DATE: Comments must be submitted no later than December 2, 1983.

ADDRESS: Send comments to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, or Bruce A. Beatus, Attorney, Division of Trading and Markets, at the address listed above. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294 (1983), amended the Commodity Exchange Act [1] in

[1] 7 U.S.C. 1 *et seq.*

several important respects to provide the Commission with greater flexibility in the administration of its registration program. Specifically, the Act was amended to authorize the Commission to grant temporary licenses under certain circumstances [2] and to establish a system of "statutory disqualifications" from registration.[3] In enacting these amendments, Congress intended to "streamline and simplify the current registration procedures to enable the Commission to register fit persons more expeditiously and to remove unfit persons from the industry more promptly." [4]

By its very nature, the making of a full fitness check can be timeconsuming. Generally, a minimum of 8 to 10 weeks are required to process an application for registration as an associated person ("AP"), even if the applicant, on the basis of the application itself, which includes a sponsor's certification as to fitness, does not appear to be unfit for registration. Because an applicant may not act in any capacity requiring registration during this fitness review period, certain hardships may be imposed on firms and, in particular, individuals seeking to enter the futures industry. Therefore, the Commission requested and Congress granted the Commission authority to issue temporary licenses to apparently qualified applicants pursuant to such rules, regulations and orders as the Commission may adopt.

Although the process by which registration is granted may seem an unnecessarily lengthy one, the process by which registration is denied, suspended or revoked takes even longer. Prior to the 1982 Act, a full administrative proceeding pursuant to section 6(b) of the Act and the Commission's rules of practice [5] was required before any registration could be denied, suspended or revoked.[6] Moreover, the only statutory standards for denial, suspension or revocation were felony convictions, outstanding suspension or revocation, debarrment from federal contracting, false or misleading statements in a registration application, or "for other good cause shown." [7]

The lack of more specific bases upon which registration could be denied, suspended or revoked, the limiting of the expedited procedure to matters specified in the rules, and the requirement that all proceedings be conducted pursuant to section 6(b) of the Act often meant that the status of a person's registration would not be resolved for a year or more. Pending final determination, an applicant would be unable to act in any capacity requiring registration. More important, however, a registrant who, for example, may have been convicted of a felony in a separate criminal proceeding and was clearly unfit to be registered, could nonetheless remain in business for a number of years. Thus, the procedure was unfair both to applicants who might ultimately be found fit to be registered and to customers who might be affected by the misconducted of an unfit registrant.

The 1982 Act significantly revised the former statutory framework by enumerating the most important bases for finding applicants or registrants unfit for registration and by providing the Commission with the authority, in appropriate cases, to deny, condition, restrict and suspend the registration of a registrant without a hearing. These revisions are intended to expedite the denial of entry into or the removal from the futures industry of persons who are clearly unfit for registration.

The following is a summary of the administrative procedures which the Commission is proposing to adopt to make use of its authority to provide for the granting of temporary licenses to apparently qualified applicants for registration as associated persons and to implement the new system of statutory disqualification from registration established in the 1982 Act. The Commission believes that these procedures will fulfill the House Agriculture Committee's expectation that the statutory authority granted in sections 8a(1)–8a(4) of the Act:

* * * will permit the Commission to develop an expedited procedure for registration, provide notice of the most important fitness standards which the Commission will apply, and promote uniformity of treatment of applicants and registrants.[8]

II. Temporary Licenses

Section 8a(1) of the Act has been amended by the 1982 Act to authorize the Commission to grant a temporary license to an applicant for registration for a period not to exceed six months, subject to such rules as the Commission may adopt. Even if the Commission has received no derogatory information concerning an applicant or, as appropriate, an applicant's principals (either from the applicant itself or from other sources), a minimum of 8 to 10 weeks nonetheless is presently required to process a properly completed application for initial registration. Much of this time is necessary to permit the Federal Bureau of Investigation and the Securities and Exchange Commission to check their records to assist the Commission in evaluating the applicant's fitness for registration. This is true even though the vast majority of applicants are qualified for registration. In this regard, the Commission estimates that less than one percent of applicants are eventually found to be disqualified from registration because of past misconduct.

Therefore, pursuant to the provisions of section 8a(1) of the Act, the Commission is proposing procedures which will permit an apparently qualifed applicant for registration as an associated person to begin work prior to completion of a full fitness check.[9] The Commission, however, is not proposing to extend the applicability of these procedures to applicants for registration in other capacities (*i.e.*, futures commission merchants ("FCMs"), introducing brokers, commodity pool operators, commodity trading advisors and floor brokers).

The Commission believes that a temporary license is particularly appropriate for an applicant for registration as an AP because such an applicant must be sponsored by another registrant which must conduct a preliminary fitness check of the

[2] Section 8a(1) of the Act, *as amended by* the Futures Trading Act of 1982, Pub. L. 97–444, section 223, 96 Stat. 2310 (1983).

[3] Section 8a(2)–8a(4) of the Act, *as amended by* the Futures Trading Act of 1982, Pub. L. 97–444, section 224(1)–(4), 96 Stat. 2310–15 (1983).

[4] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 30 (1982).

[5] 17 CFR Part 10 (1983).

[6] Sections 8a(2) and 8a(3) of the Act, 7 U.S.C. 12a(2) and 12a(3) (Supp. V 1981). The former section 8a(2)(A) of the Act did permit summary denial of an applicant whose prior registration had been suspended (and such suspension was still in effect) or revoked. There also existed an expedited procedure for commencing a proceeding to deny registration to an applicant with an obvious disqualification, with authority delegated to the Director of the Division of Trading and Markets. However, the applicant still was accorded a full "on the record" hearing. *See* Rule 3.20, 17 CFR 3.20 (1983).

[7] Section 8a(2)(B) of the Act, 7 U.S.C. 12a(2)(B) (Supp. V 1981). In 1975, the Commission issued an interpretative statement which set forth a number of factors which, in the Commission's opinion, would constitute "other good cause" for denial of an application for registration. 40 FR 28125 (July 3, 1975). This interpretative statement was amended in 1980. 45 FR 14210 (March 5, 1980).

[8] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

[9] Although the Commission is proposing these temporary license rules at this time, the Commission is still conducting a study of the feasibility of itself implementing temporary licensing. If the Commission should determine that it cannot implement this program itself, it nonetheless may delegate to the National Futures Association ("NFA") the authority to grant temporary licenses to those associated persons whom the NFA is authorized to register.

applicant and which must directly supervise the applicant's conduct.[10] In contrast, other registrants are not subject to such scrutiny or direct supervision. Moreover, if a temporary license were granted to applicants other than APs, the applicant would be able to commence business, hire employees and, in the case of an FCM, accept customer funds, subject to a subsequent denial determination by either the Commission or the National Futures Association. The Commission believes that the potential disruptions to both customers and employees which might result from interrupting an ongoing business outweigh the benefits which might be achieved by granting temporary licenses to such applicants.

The procedures the Commission is proposing set out the conditions for obtaining a temporary license. Temporary licenses will be granted only to applicants who contemporaneously file with the Commission: (1) A properly completed Form 8–R which contains no derogatory information;[11] (2) alegible set of fingerprints on a fingerprint card provided by the Commission (or a copy in certain cases); and (3) the appropriate sponsor's certification. *See* proposed § 3.40. These procedures differ from the procedures for registration of associated persons presently set forth in Commission rules 3.12 and 3.16 in that under those rules: (1) An applicant eventually may be registered even if the application discloses derogatory information; and (2) the sponsor's certification may be submitted after the application has been filed.

Before granting a temporary license, the Commission's staff will review the application and query its own computer files to ensure that the Commission has no information indicating that the applicant may be subject to a statutory disqualification. If the Commission has such information, obviously a temporary license will not be granted. In this connection, the Commission wishes to remind applicants and their sponsors that it is a felony under section 9(b) of the Act, 7 U.S.C. 13(b) (1982), "knowingly to make any false or misleading statement of a material fact in any registration application * * *, or knowingly to omit in any application * * * any material fact that is required to be stated therein." *See also* 18 U.S.C. 1001. Moreover, any willfully false or misleading material statement or omission of a material fact is a separate basis for disqualification from registration.[12]

The Commission also wishes to emphasize that, if the temporary license program is to succeed, applicants and their sponsors must comply with these filing requirements exactly. If the Form 8–R is incomplete or the fingerprint card is illegible or the sponser's certification does not accompany the application, the application will be returned to the applicant. The application fee, however, will not be returned.

If the Commission's staff were required to spend as much time as it currently spends dealing with deficient applications, the temporary license program would surely fail. Although it is the applicant's responsibility to file a complete application with the Commission, applicants have become so lax that fully forty percent of all applications filed are deficient in some way. As a result, an unnecessary burden is placed on the Commission's staff and the time required to process all applications is increased. Thus, those who file complete applications suffer additional delays.

The Commission's proposal would permit an individual who receives a temporary license to act in the capacity of an associated person and would require that individual to comply with all of the obligations imposed on APs by the Act and the Commission's rules, regulations and orders thereunder. In particular, individuals who have received a temporary license would be subject to reparations proceedings under section 14 of the Act. The grant of such a temporary license, however, would not constitute registration, or create any inference in favor of registration, nor would denial of a temporary license necessarily mean that ultimately registration would be refused. *See* Proposed § 3.41.

As noted above, section 8a(1) of the Act provides that the term of a temporary license may not exceed a period of six months. The Commission believes that the applications of applicants who have received temporary licenses will be processed before the expiration of that six month period. If the applicant is found fit for registration, he will be registered; if he is found to be subject to a statutory disqualification, the applicant will be sent a notice of intent to deny under proposed rules §§ 3.52 or 3.60 and the temporary license will be terminated immediately.[13] In the event that the Commission fails either to register the applicant or to serve notice of its intent to deny registration before the six month period has expired, the proposed rules provide that registration will be granted automatically.[14] See proposed §§ 3.42–3.43.

III. Statutory Disqualifications

Among the more significant amendments to the Act adopted in the 1982 Act are those contained in sections 8a(2) through 8a(4) of the Act, which establish a system of statutory disqualifications from registration and provide the Commission with greater flexibility in the administration of its registration program. The 1982 Act creates a two-tiered system of statutory disqualifications. The most egregious bases for disqualification from registration are set forth in section 8a(2) of the Act. The registration of an applicant or registrant subject to a section 8a(2) disqualification may be denied, conditioned, restricted or suspended "upon notice, but without a hearing" and may be revoked "with such hearing as may be appropriate." Thus, persons whose prior conduct has rendered them statutorily disqualified from registration may be denied registration or temporarily suspended from registration without first being provided a complete oral hearing pursuant to section 6(b) of the Act.

The disqualification standards set forth in section 8a(3) of the Act are of the type for which additional evidence may be useful. Therefore, if an applicant is subject to one of the section 8a(3) disqualification standards, the Commission may refuse to register such person or, pursuant to section 8a(4) of the Act, may suspend, revoke, condition or place restrictions upon the registration of a disqualified person, but only after the opportunity for a hearing. The procedures which the Commission is proposing to adopt to implement the

[10] *See, e.g.*, Section 4k(5) of the Act, 7 U.S.C. 6k(5) (1982) and Commission rule § 166.3, 17 CFR 166.3 (1983).

[11] The Commission is presently revising the Form 8–R so that applicants and the Commission staff may more readily identify past conduct which may subject the applicant to a statutory disqualification from registration.

[12] Sections 8a(2)(G) and 8a(3)(G) of the Act, 7 U.S.C. 12a(2)(G) and 12a(3)(G) (1982).

[13] A temporary license also will terminate whenever the association of the applicant with the registrant which filed the sponsorship certification ceases. This is consistent with the provisions of Commission rules §§ 3.12(b) and 3.16(b) which provide that the registration of an AP ceases when the AP ceases to be associated with the sponsoring registrant.

[14] A person who receives a letter granting a temporary license to act as an associated person will not receive a second letter when registration has been granted. Since a person who has not been notified of the Commission's intent to deny registration before the expiration of six months is automatically registered, the Commission believes that a second letter is unnecessary. However, the Commission (or NFA when it has been delegated more of the Commission's registration responsibilities) will publish a directory of registered APs from time to time.

provisions of sections 8a(2) through 8a(4) of the Act are described below.

A. Withdrawal of Application for Registration

Since late 1978, the Director of the Division of Trading and Markets, pursuant to authority delegated by the Commission, has been able to send an applicant for registration a so-called "withdrawal" letter under Commission rule § 3.20 (formerly rule 1.10e), 17 CFR 3.20 (1983), if it appears that the applicant would be found unfit for registration after further investigation, generally in circumstances where the applicant has disclosed disqualifying information on the application or such information has been obtained as a result of the fitness checks conducted by the Federal Bureau of Investigation or the Securities and Exchange Commission. The withdrawal procedure permits applicants who receive such letters to withdraw their applications, in which case the procedures for denial of registration will not be instituted. If the recipient of a "withdrawal" letter wishes to pursue registration rather than to withdraw, the applicant has 30 days in which to confirm that the Commission should give the application further consideration.

The Commission has adapted this existing withdrawal procedure to the proposed regulations implementing sections 8a(2) through 8a(4) of the Act. Under this proposal, whenever the Commission has information which indicates that an applicant may be subject to a statutory disqualification under sections 8a(2) or 8a(3), the applicant will be notified and given the opportunity to withdraw the application. This function is delegated to the Director of the Division of Trading and Markets, who is required to issue the withdrawal notice in every applicable case. *See* proposed § 3.51. If the applicant elects to pursue registration, a denial proceeding under section 8a(2) or section 8a(3), as appropriate, will be instituted.

B. Denial of Registration Pursuant to Section 8a(2)

Under the amendments contained in the 1982 Act, an applicant subject to a statutory disqualification under section 8a(a) of the Act may be denied registration upon notice, but without a hearing. The House and Senate Committee Reports on the 1982 Act suggest how Congress intended this provision to be implemented. For example, the House report provides:

> It is contemplated that the Commission will develop procedures pursuant to section 8a(2) that will provide adequate notice to an applicant or registrant that the Commission has information which indicates that he is subject to a statutory disqualification, and which also will afford him an opportunity to reply or explain in writing (e.g., advise the Commission of a clerical error or a case of mistaken identity).

H.R. Rep. No. 565 (part 1), 97th Cong., 2d Sess. 96–97 (1982). Similarly, the Senate Report indicates that under section 8a(2) "[t]he Commission could take [action other than revocation] after notice but without giving the affected party a hearing," but also expresses the expectation that "the Commission will develop procedures pursuant to section 8a(2) which will satisfy the constitutional requirements of due process of law." S. Rep. No. 384, 97th Cong., 2d Sess. 36, 92 (1982). *Accord*, 128 Cong. Rec. S13074–75 (daily ed. October 1, 1982) (remarks of Sen. Helms).

It is thus clear that Congress expected that the Commission would use the flexibility provided by section 8a(2) to develop procedures which would expedite the processing of registration applications for persons subject to section 8a(2) disqualifications, while at the same time satisfying due process requirements. The Commission has not chosen to interpret the words "without a hearing" literally to preclude any showing with respect to the alleged disqualification. The applicant will have an opportunity to establish that a factual error has been made and that the applicant is not subject to a statutory disqualification. The type of hearing which the Commission proposal contemplates, however, is a hearing which will provide "an opportunity to reply or explain in writing," without opportunity for an oral presentation, as to certain limited matters concerning the fact of the statutory disqualification.[15]

Consistent with Congressional intent, the Commission is proposing procedures that provide for written notice to an applicant that the Commission is in possession of information which indicates that such an applicant is subject to a section 8a(2) disqualification, that the applicant may submit evidence in writing (not including evidence with respect to rehabilitation) challenging the accuracy of the allegations set forth in the notice within a specified period of time and that, if the applicant is subject to the disqualification indicated, the registration can be denied. *See* proposed § 3.52. A copy of the record establishing the disqualification, *e.g.*, the court order of conviction or injunction upon which the notice is based, would be enclosed therewith.

Under the proposal, the applicant will have twenty days after notice is served to file a written response. If the applicant files a written submission challenging the accuracy of the allegations against him, the Division of Trading and Markets and the Division of Enforcement will have ten days in which to file a reply. Thereafter, a hearing officer, based upon the written record, will determine whether the applicant is subject to a statutory disqualification. If the hearing officer finds that the applicant is subject to a statutory disqualification, the hearing officer must issue an order denying registration which will become effective as a final order of the Commission ten days after it is served on the applicant, unless an appeal is filed with the Commission.[16] *See* proposed § 3.53.

As the legislative history indicates, once the fact of the disqualification is established, Commission action affecting the person's registration application or status follows as a matter of law.[17] Therefore, the type of written submission contemplated under this proposal does not include the submission of arguments concerning matters other than those directly bearing on the existence of the disqualification such as a clerical error in a governmental record or a case of mistaken identity.

Moreover, as noted earlier, Congress granted the Commission greater flexibility in the administration of its registration program by authorizing the Commission to condition as well as deny an application for registration. At the same time, however, Congress expressed its intent that the procedures adopted by the Commission ensure the uniform treatment of all applicants.[18] In order to ensure such uniformity, and given the nature of the violations set forth in section 8a(2), the Commission has determined that it will not exercise its authority to grant conditional registrations to persons subject to 8a(2) disqualifications at this time. The Commission believes that applicants

[15] As already noted, the key distinction between sections 8a (2) and (3) is that under section 8a(2) (and unlike under former law) the Commission is not required, except in the case of a proceeding to revoke the registration of a registrant, to provide an opportunity for a hearing to an applicant or registrant. Therefore, the Commission has determined not to provide an opportunity for an oral presentation by the applicant who may be subject to a section 8a(2) disqualification.

[16] If the applicant fails to file a written submission, proposed rule 3.54 provides that the applicant will be deemed to be in default and registration will be denied.

[17] *See, e.g.*, H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

[18] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

subject to such disqualifications are not qualified to enter the business and thus should not be registered under any conditions. This finding is essential if the procedures for denial are to be as uniform and expeditious as possible. The Commission will follow closely the implementation of this determination, however, and will monitor its effect to assess whether undue hardship results.

C. Suspension and Revocation Under Section 8a(2)

With respect to registrants subject to a section 8a(2) statutory disqualification, the proposed rules establish a two-step procedure pursuant to which the registrant is entitled first to a paper hearing on the fact of the statutory disqualification, similar to that provided applicants. If the registrant is found subject to a statutory disqualification, the Administrative Law Judge will issue an interim order immediately suspending the registrant and requiring the registrant to show cause why registration should not be revoked. The suspension will remain in effect pending completion of the revocation proceeding. *See* proposed § 3.55(a)–(d). Thus, this two-step procedure will enable the Commission to remove an unfit registrant from the business expeditiously while, at the same time, grant the registrant an appropriate hearing before registration is revoked.

The language of section 8a(2) treats revocation of an existing registration as a special case which the Commission may effect only "with such a hearing as may be appropriate." This demonstrates Congress' understanding, as reflected in the legislative history, that revocation constitutes a deprivation of an existing interest.[19] Therefore, revocation must be preceded by a type of hearing more elaborate than that otherwise generally provided under section 8a(2).

Pursuant to Congressional intent, the Commission is proposing that a registrant be afforded an opportunity for a limited form of hearing in which the registrant may submit in addition to evidence in writing challenging the accuracy of the allegations which form the basis for the statutory disqualification, memoranda, briefs and affidavits in support of the contention that, notwithstanding the existence of a statutory disqualification under section 8a(2) of the Act, the registration of the registrant should not be revoked. The Administrative Law Judge may permit oral hearings, but requests will be granted only under exceptional circumstances. *See* proposed § 3.55(f)–(h). Based upon the written submission filed by the registrant, any reply filed by the Division of Trading and Markets and the Division of Enforcement and the oral hearing, if granted, the Administrative Law Judge will issue an appropriate order. *See* proposed § 3.55(i).

In general, the Commission expects that the registration of a registrant subject to a section 8a(2) disqualification will be revoked. Nonetheless, the Administrative Law Judge retains the discretion, upon a clear and compelling showing by the registrant, to suspend such registration for an additional period of time. In addition, the proposed rules also authorize the Administrative Law Judge to restrict the registration of an associated person if the sponsor confirms in writing that it is willing to supervise the associated person notwithstanding the statutory disqualification and the Administrative Law Judge finds, under the facts and circumstances of the particular case, that restriction of registration is otherwise appropriate.

The proposed rules provide that a sponsor may not offer to supervise a disqualified associated person if the sponsor is the subject of a pending administrative action before the Commission or, if the sponsor is an FCM, is subject to the financial reporting requirements of section 1.12(b) of the regulations. The proposed rules also set forth the circumstances when an associated person's registration may not be restricted and only revocation is appropriate. *See* proposed § 3.55 (f) and (i).[20]

D. Constitutional Considerations

The Commission believes that the procedures proposed to implement section 8a(2) of the Act fully comport with the constitutional requirements of due process. The Fifth Amendment to the Constitution provides, in pertinent part, that the Federal government may not deprive any person of "life, liberty or property, without due process of law", and the Commission is aware that certain actions pursuant to section 8a(2) which affect the license of a registrant may affect a property interest. However, the nature and extent of this property interest, as created and defined by the pertinent provisions of the Commodity Exchange Act and the Commission's regulations thereunder, is relevant to what process is due. Thus, the absence of a statutory disqualification may be deemed to be a condition of retaining a license and its retention in the event of the existence of such a disqualification would be at the Commission's discretion, subject to judical review.

Moreover, the risk of an erroneous deprivation of such interest through these procedures is slight, as each section 8a(2) disqualification involves matters which ordinarily will be documented in officially maintained governmental records, *e.g.*, criminal convictions, judicial orders, etc. Consequently, whether a person is subject to a statutory disqualification is an issue which may be resolved without adjudicating the underlying facts and does not involve questions of credibility or veracity which might require the cross-examination of witnesses. The probable value of additional or substitute procedural safeguards such as a formal oral hearing or even of an oral presentation to the Commission is therefore negligible, as the type of claim which typically will be made in these situations, *e.g.*, a clerical error or a case of mistaken identity, is particularly suited to be handled by the submission of papers.[21] In addition, the person will already have had an opportunity for a full hearing before a court or other governmental body as to the facts constituting the disqualification and the Commission decision is subject to judicial review, a further safeguard of significance. The Commission, of course, has reserved to itself the discretion to conduct additional proceedings in exceptional cases. *See* proposed § 3.75(c).

E. Proceedings Under Sections 8a(3) and 8a(4)

Section 8a(3) of the Act, as amended, authorizes the Commission "to refuse to

[19] *See, e.g.*, S. Rep. No. 384, 97th Cong., 2d Sess. 36 (1982) ("The Commission * * * prior to revocation, must give the registrant the opportunity for a hearing and submit evidence forming a basis for the finding that the registrant is subject to a statutory disqualification."); *id.* at 37 ("The Committee expects that the Commission will exercise its discretion judiciously and not use its powers to suspend or restrict a registration, without a hearing, *as de facto* revocation of that registration.")

[20] The Commission wishes to make clear that the obligations imposed on a registrant which is willing to sponsor an associated person who is otherwise disqualified from registration are significant and, therefore, should not be assumed lightly. Indeed, the Commission believes that the failure of a registrant to supervise properly such associated person may, under the facts and circumstances of a particular case, establish "good cause", pursuant to which the registration of the registrant may be suspended, restricted or revoked. *See* section 8a(3)(M) of the Act, 7 U.S.C. 12a(3)(M) (1982).

[21] The ability of applicants and registrants to communicate their cases effectively to the Commission in writing is not to be doubted. Moreover, the information upon which the Commission will base its decision to affect registration will be provided to the person, enabling him to challenge its accuracy easily. "These procedures * * * enable the [person] to 'mold' his argument to respond to the precise issues which the [Commission] regards as crucial." Mathews v. Eldridge, 424 U.S. 319, 346 (1976).

register or to register conditionally any person" if "after opportunity for hearing," the Commission makes certain findings of misconduct, which are enumerated in subparagraphs (A) through (N) of that provision. Section 8a(4) authorizes the Commission to suspend, place restrictions upon or revoke registration based upon the grounds set forth in section 8a(3) and in accordance with the procedures of section 6(b). A hearing under Part 10 of the Commission's regulations is available to all applicants and registrants. The only significant change is that the Commission has delegated to the staff the authority to commence a proceeding in all cases by serving notice on the applicant or registrant without the necessity of obtaining separate Commission approval each time a proceeding is initiated. *See* proposed § 3.60.

IV. Notice Under Section 4k(5)

Ancillary to Sections 8a (2) and (3) is Section 4k (5) *as enacted by* the 1982 Act, Pub. L. No. 97–444, Section 212, 96 Stat. 2305 (1983), which provides that it is:

> * * * unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a (2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

The pertinent legislative history indicates that this provision imposes on a registrant "a duty to make reasonable inquiry into the background of any person who becomes or remains associated with it as an associated person" which includes, "at a minimum, a check of the person's background with the Commission and with prior employers." H.R. Rep. No. 565 (Part 1), 97th Cong. 2d Sess. 89–90 (1982). That report further explains that "[b]y imposing greater statutory responsibilities on employers for the fitness of their employees than [formerly existed], section 4k (5) should lead to an upgrading of the level of employees in the industry." *Id.* at 90.[22] With respect to its implementation by the Commission, the Senate Committee report indicates an expectation that the Commission will "issue regulations specifying how compliance with this provision shall be achieved." S. Rep. No. 384, 97th Cong., 2d Sess. 39 (1982).

Earlier this year, the Commission adopted interim procedures to implement section 4k(5).[23] The Commission is now proposing to require registrants to notify the Commission whenever the registrant knows or should know that an associated person whom it has sponsored pursuant to §§ 3.12 or 3.16 of the regulations is subject to a statutory disqualification under section 8a(2) of the Act. Such notice must be received within ten business days of the date upon which the registrant knows or should know that the associated person is subject to a statutory disqualification. *See* proposed § 3.70(a). Failure to notify the Commission could, under the facts and circumstances of a particular case, constitute a basis for suspending, restricting or revoking the registration of the registrant under section 8a(3)(L) of the Act.

In accordance with the provisions of section 4k(5) of the Act, the Commission is further proposing that upon such notification to the Commission, or upon notification by the Commission to the registrant under these regulations that the associated person is subject to a statutory disqualification, the registrant may not permit the associated person to act in the capacity as such until the Commission determines that such associated person should nonetheless be registered. *See* proposed § 3.70(b).

V. Reservation of Authority

Proposed rule § 3.75:(1) Delegates the authority to perform the functions specified in these regulations to the persons authorized to perform them, (2) reserves to the Commission the authority to exercise the delegated authority if it so desires, (3) reserves to the Commission the authority to proceed by order or to institute a proceeding itself in any case, (4) reserves to the Division of Enforcement the authority to take such other action as may be appropriate in a particular case and (5) reserves to the Commission the authority to delegate its registration to a registered futures association.

Pursuant to section 8a(10) of the Act, the Commission has delegated to NFA the authority to register introducing brokers and their APs.[24] This delegation, however, does not include the authority to condition or deny registration. As NFA assumes more of the Commission's registration functions, the Commission expects to delegate to NFA the authority to deny, condition, suspend, restrict or revoke registration, subject to review by the Commission. In performing these functions, NFA will be required to adopt procedures essentially similar to those adopted by the Commission.

VI. Amendments of Existing Regulations

The Commission is proposing to amend several additional rules contained in Part 3 of the Commission's regulations. In general, these amendments will conform the existing regulation to the procedures being proposed in this notice. The Commission, however, is proposing one amendment to eliminate certain unintended difficulties which have arisen in the administration of the Commission's registration regulations.

A. Changes Requiring a New Registration

Rule § 3.32, 17 CFR 3.32 (1983) as amended by 48 FR 35298 (Aug. 3, 1983), sets forth the circumstances which require a new registration. The Commission notes that under current § 3.32(a), a new registration is required in the event of a change "[i]n the name of the registrant if the registrant is a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker."

Because the duration of an AP's registration is coextensive with its association with a particular, sponsoring registrant,[25] an AP's registration terminates technically whenever a registrant changes its name. Absent an exemption, such APs are required to re-register with the Commission as APs of the newly-named entity even though their applications were "sponsored" by the original entity just a short time before and none of the principals of the newly-named entity have changed.

The Commission is aware that this requirement has created certain hardships whenever a registrant seeks to change its name. In this regard, the Division of Trading and Markets, pursuant to authority delegated by § 3.12(g)(2)(i), 17 CFR 3.12(g)(2)(i) (1983), has recently granted several exemptions from § 3.12(b) where a registrant simply sought to conduct business under a new name. Accordingly, the Commission is

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[22] In this regard, section 8a(4) , through section 8a(3)(L), authorizes the Commission to suspend, place restrictions or revoke the registration of any person, if it is found, after opportunity for hearing, that: Such person has associated with such person any other person and kowns, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed * * *.

[23] 48 FR 22779 (May 20, 1983).

[24] 48 FR 35158 (Aug. 3, 1983).

[25] Rule § 3.12(b), 17 CFR 3.12(b) (1983) as amended by 48 FR 35292 (Aug. 3, 1983) and rule § 3.16(b), as added by 48 FR at 35295.

proposing to amend § 3.32 to delete the requirement that a new registration be obtained in the event of a change in the name of a registrant. The Commission wishes to make clear, of course, that the registrant would still be required to notify the Commission of any change in the name of the registrant on the Form 3–R pursuant to Rule 3.31, 17 CFR 3.31 (1983) as amended by 48 FR at 35297.

The Commission also is proposing to amend § 3.32 to require a new registration in the event of a change in the control of a registrant in the case of a corporation. For purposes of this section, proposed paragraph (d) of § 3.32 specifies the circumstances which the Commission shall deem to constitute a change in the control of a corporation. As the Commission has previously stated, one of the central objectives of registration is to ensure, to the extent reasonably possible, the fitness of all registrants,[26] and the Commission notes that § 3.32 already requires a new registration in the event of change in the ownership of the business in the case of a sole proprietorship and in the event of a change in the personnel of a partnership resulting from the addition of a general partner. The proposed amendment, therefore, merely fills a gap in the existing regulation.

To make certain that an appropriate background check and review of an applicant's or principal's fitness is undertaken whenever a new person intends to assure control of a registrant, the Commission is also proposing to require the new principals of a firm to submit a Form 8–R and a fingerprint card in connection with the new registration.[27] It should be noted that the exemption from filing a fingerprint card under § 3.21 is the only exemption applicable under proposed § 3.32.

For the same reasons that the Commission is proposing that new principals of a firm requiring new registration file a Form 8–R and fingerprint card with the Commission in every instance, the Commission believes that the exemptions for APs, floor brokers and principals from filing a Form 8–R and fingerprint card contained in §§ 3.10–3.15 are no longer appropriate. However, the Commission is not now proposing to repeal these exemptions, but it is specifically requesting comment on whether such exemptions are necessary.

[26] *See* 45 FR 80485, 80489 (Dec. 5, 1980).

[27] If the person assuming control of a registrant is not a natural person, the Commission has the authority under § 3.22(b) of the regulations to require principals of that controlling person to file a Form 8–R and fingerprint card.

B. Technical Amendments

Sections 3.12(c)(2) and 3.16(c)(2) of the regulations presently permit a sponsoring registrant to submit the certification required with respect to an applicant for registration as an associated person after the Form 8–R and fingerprint card with respect to such applicant. As discussed above, the Commission is proposing that applicants who are seeking a temporary license must file the sponsor's certification contemporaneously with the Form 8–R and fingerprint card. Since the Commission believes that the vast majority of applicants will be seeking a temporary license, the Commission is proposing to amend §§ 3.12(c)(2) and 3.16(c)(2) to require that the sponsor's certification always be submitted at the same time as the Form 8–R and fingerprint card. This amendment should have an effect on relatively few applicants and reflects the intent of Congress in enacting section 4k(5) of the Act that registrants make a reasonable inquiry into the background of an individual before permitting that individual to become associated with it as an associated person.

The Commission is proposing to delete Appendix A to Part 3 of the Commission's regulations, which is an interpretative statement regarding the "good cause" standards for denial of registration. The Commission notes that the statutory disqualifications established in sections 8a(2) and 8a(3) by the 1982 Act, with one exception, are drawn either from the existing policy of the Commission set forth in the Act, Commission regulations or this interpretative statement or from section 15 of the Securities and Exchange Act of 1934,[28] the comparable provision of the securities laws regarding broker-dealers and their associated persons. Since almost all of the factors listed in the Commission's interpretative statement are now expressly enumerated in the Act, as amended, the Commission believes it is no longer necessary to retain Appendix A of Part 3 of its regulations. Repeal of Appendix A, of course, will not affect pending proceedings to deny, suspend or revoke registration under former section 8a(2)(B)(ii).

At the same time, however, the Commission wishes to emphasize that section 8a(3)(M) of the Act authorizes the Commission to deny, condition, suspend, restrict or revoke registration for "other good cause shown." Therefore, the Commission retains authority to initiate a proceeding against a registrant for conduct other than that specifically set forth in sections 8a(2) and 8a(3) of the Act. For example, as discussed above, the Commission believes that the failure of a registrant to supervise properly an associated person who is otherwise subject to a statutory disqualification may constitute "good cause" for suspending, restricting, or revoking the registration of the registrant.

The Commission is proposing certain other technical and conforming amendments to Part 3 of the Commission's regulations. For example, the Commission is proposing to amend § 3.2 to authorize the National Futures Association to grant temporary licenses to eligible APs of introducing brokers. In addition, as noted earlier, the Commission is proposing to amend § 3.21(a) to include reference to proposed §§ 3.32 and 3.40. This amendment would expand the exemption from the Commission's fingerprinting requirement in certain cases to incorporate the rules proposed herein which also require the submission of a fingerprint card.

VII. Related Matters

A. Regulatory Flexibility and Other Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. In this regard, the Commission has already established that neither futures commission merchants nor registered commodity pool operators should be considered small entities for purposes of the RFA.[29] Accordingly, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, the Commission believes that the proposed rules would not impose any additional burdens upon such parties since all registrants are already subject to the registration requirements of the Act and Part 3 of the Commission's regulations. To the contrary, as the Commission has already noted above, the proposed rules will streamline and simplify the current registration procedures. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman-Designate hereby certifies that the proposed amendments to Part 3 would not have a significant economic impact on a substantial number of small entities. The Commission, however, particularly invites comment from any firm which

[28] 15 U.S.C. 78o.

[29] *See* 47 FR 18618 (April 30, 1982).

believes that this proposal would have a significant economic impact on it.

Finally, the Commission wishes to note that certain of these proposed new or amended rules extend current information collection requirements to cover the new system of temporary licenses, statutory disqualifications from registration and conditional registration established by the Futures Trading Act of 1982. In each case, the proposed new or amended rule is part of a package of reporting or recordkeeping rules that was previously reviewed by the Office of Management and Budget ("OMB"), pursuant to the Paperwork Reduction Act of 1980, and assigned an OMB Control Number. Accordingly, the Commission is submitting to the OMB Inventory Correction Worksheets for each of the Control Numbers involved, and is also submitting a copy of these specific amendments and rules proposed herein.

B. Comment Period

The Commission is providing a 30-day comment period for the foregoing proposed rules and rule amendments in order to enable the Commission to adopt final rules governing the granting of temporary licenses and the new system of statutory disqualifications in a timely manner. The Commission believes that a 30-day comment period, the comment period otherwise required under 5 U.S.C. 553(d), will satisfactorily balance the need to adopt such procedures in a timely manner against the benefits to be attained by receiving public comment. Although the Commission does not intend to extend the comment period on this proposal, the Commission and its staff will endeavor to consider all comments that are received prior to final action by the Commission in this rulemaking proceeding.

List of Subjects

17 CFR Part 3

Reporting and recordkeeping requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Brokers, Commodity futures.

17 CFR Part 10

Administrative practice and procedure, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15 and 17 thereof, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19 and 21 (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The existing text, sections 3.1 through 3.33, are proposed to be designated under a new Subpart heading.

Subpart A—Registration

2. Section 3.2 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

(a) With respect to the registration of introducing brokers and the associated persons of introducing brokers, the registration functions of the Commission set forth in this section and in §§ 3.12, 3.15 , 3.21, 3.31, 3.32, and 3.40 shall be performed by the National Futures Association.

* * * * *

(c) Upon receipt of an application for registration or renewal thereof, the Commission or the National Futures Association will, if registration is granted, notify the registrant, or the sponsor in the case of an application for registration as an associated person, that registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40 of this part, the Commission or the National Futures Association will notify the sponsor only that a temporary license has been granted.

* * * * *

3. Section 3.12 is proposed to be amended by revising paragraphs (c)(2) and (d)(1)(iv) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8–R.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or § 3.20 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 or § 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

4. Section 3.16 is proposed to be amended by revising paragraphs (c)(2) and (d)(1)(iv) to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

* * * * *

(c) * * *

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8–R.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or § 3.20 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 or § 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

5. Section 3.20 is proposed to be amended by adding a new paragraph (j) to read as follows:

§ 3.20 Delegation of authority to deny registration.

* * * * *

(j) Notwithstanding the provisions of §§ 3.51, 3.55 and 3.60, pending proceedings brought under this section shall continue to completion.

6. Section 3.21 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by §§ 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.32 or 3.40 to submit a fingerprint card may file, or cause to be filed, in lieu of such card:

(1) A legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification

and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the Commission or the National futures Association of the photocopy; or

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days: *Provided*, That the provisions of paragraph (a)(2) shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration.

* * * * *

7. Section 3.32 is proposed to be revised to read as follows:

§ 3.32 Changes requiring new registration.

(a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor, a new registration is required in the event of a change:

(1) In the form of organization of the registrant;

(2) In the ownership of the business of the registrant in the case of a sole proprietorship;

(3) In the personnel of a partnership resulting from the addition of a general partner; and

(4) In the control of the registrant in the case of a corporation or other form of association.

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not properly listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose.

(d) For purposes of this section, a change in the control of a corporation shall be deemed to have occurred whenever a person not listed on the corporate registrant's initial application for registration:

(1) Acquires the right to vote, or becomes the beneficial owner of, ten percent or more of that registrant's voting securities;

(2) Becomes entitled to receive ten percent or more of that registrant's net profits;

(3) Has contributed ten percent or more of that registrant's capital;

(4) Becomes a director of that registrant; or

(5) Becomes the chief executive officer of that registrant or occupies a position of similar status or performs a similar function.

(e) (1) Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that it should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the purposes of this section. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of this section. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's designee the authority to grant or deny petitions filed pursuant to this paragraph (e).

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated to the Director pursuant to paragraph (e)(2)(i) of this section.

8. Subparts B through E are proposed to be added to 17 CFR Part 3 to read as follows:

Subpart B—Temporary Licenses

Sec.

3.40 Temporary licensing of applicants for associated person registration.
3.41 Restrictions upon activities.
3.42. Termination.
3.43 Relationship to registration.

Subpart C—Denial, Suspension or Revocation of Registration

3.50 Service.
3.51 Withdrawal of application for registration.
3.52 Notice of intent to deny registration pursuant to section 8a(2) of the Act.
3.53 Determination by hearing officer.
3.54 Default.
3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.
3.56 Applicability of the Rules of Practice.
3.57–3.59 [Reserved]
3.60 Authority to deny, condition, suspend, revoke or place restrictions upon registration pursuant to section 8a (3) and (4) of the Act.
3.61 Request for hearing.
3.62 Waiver of hearing.
3.63 Service of order issued by a hearing officer.

Subpart D—Notice Under Section 4k(5) of the Act

3.70 Notification of certain information regarding associated persons.

Subpart E—Delegation and Reservation of Authority

3.75 Delegation of reservation of authority.

Authority: Secs. 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, and 17 of the Commodity Exchange Act (17 U.S.C. 2, 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 18, 19, and 21).

Subpart B—Temporary Licenses

§ 3.40 Temporary licensing of applicants for associated person registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the Commission may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the Commission of:

(a) A Form 8–R, properly completed in accordance with the instructions thereto, which contains no derogatory information indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(b) The fingeprints of the applicant on a fingeprint card provided by the Commission for that purpose; and

(c) The sponsor's certification required by § 3.12(c) or § 3.16(c), as appropriate.

§ 3.41 Restrictions upon activities.

(a) Subject to the provisions of § 3.42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person.

(b) Until registration has been granted, an applicant for registration as an associated person who has received a temporary license may not be sponsored by any registrant other than

the registrant which has filed the certification described in § 3.40(c).

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission pursuant to § 3.52 or § 3.60 that the applicant for registration may be found subject to a statutory disqualification from registration; or

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c).

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person or be associated with any person required to be registered under the Act.

§ 3.43 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated pursuant to § 3.42, a temporary license shall become a registration with the Commission upon the earlier of:

(1) A determination by the Commission that the applicant is qualified for registration as an associated person; or

(2) The expiration of six months from the date of its issuance.

Subpart C—Denial, Suspension or Revocation of Registration

§ 3.50 Service.

(a) For purposes of this subpart, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

(b) A copy of any notice served in accordance with paragraph (a) of this section shall also be served upon:

(1) Any registrant sponsoring the applicant pursuant to the provisions of § 3.12 or § 3.16, if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(2) Any futures commission merchant which has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter if the applicant or registrant is registered as or applying for registration as an introducing broker.

(c) Documents served upon the Division of Trading and Markets or upon the Division of Enforcement or filed with the Commission under this subpart shall be considered served or filed only upon actual receipt at the Commission's Washington, D.C. office, 2033 K Street NW., Washington, D.C. 20581.

(d) Except for the documents which may be served under § 3.51, any documents served upon an applicant or registrant or upon the Division of Trading and Markets or the Division of Enforcement or filed with the Commission under this subpart shall be concurrently filed with the Hearing Clerk, together with proof of service, in accordance with the provisions of § 10.12 (d) and (e) of this chapter.

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Director of the Division of Trading and Markets or the Director's designee may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

(1) The information, if true, is a basis upon which the applicant's registration may be denied;

(2) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in this subpart; and

(3) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application of the applicant will be deemed to have been withdrawn.

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Director of the Division of Trading and Markets or the Director's designee on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§ 3.52 Notice of intent to deny registration pursuant to section 8a(2) of the Act.

On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time, subject to the provisions of § 3.51, serve a notice upon any applicant for registration in any capacity under the Act that:

(a) The Commission alleges and is prepared to prove that the applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(b) The allegations set forth in the notice, if true, constitute a basis upon which registration can be denied;

(c) The applicant is entitled to have a hearing officer make a determination, based upon written evidence submitted in accordance with the procedure set forth in § 3.53, as to whether the applicant is subject to such statutory disqualification; and

(d) If the applicant does not timely submit such evidence in accordance with the procedure set forth in § 3.53, registration will be denied as provided in § 3.54.

§ 3.53 Determination by hearing officer.

(a) If the applicant wishes to have a hearing officer make a determination as to whether the applicant is subject to a statutory disqualification under section 8a(2) of the Act, the applicant may submit evidence in writing limited to challenging the accuracy of the allegations set forth in the notice, including evidence as to: (1) The applicant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. Such written submission must be serviced upon the Division of Trading and Markets and the Division of Enforcement and filed with the Hearing Clerk within twenty days after the date of service upon the applicant of the notice under § 3.52.

(b) Within ten days after receipt of any written submission filed by the applicant, the Division of Trading and Markets and the Division of Enforcement may serve upon the applicant and file with the Hearing Clerk a reply. Thereafter, a hearing officer will determine whether the applicant is subject to a statutory disqualification under section 8a(2) of the Act. Such determination must be based upon the application, the evidence of the statutory disqualification, the notice with proof of service, the written submission filed by the applicant in response thereto, any written reply submitted by the Division of Trading and Markets or the Division of Enforcement and such other papers as the hearing officer may require or permit.

(c) Within thirty days after receipt of the applicant's written submission, and any reply thereto, the hearing officer must issue an order, pursuant to section 8a(2) of the Act, granting or denying registration, which shall be deemed a final order of the Commission fifteen days after the date it is served upon the applicant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (d) of this section is filed. A copy of such order shall be served upon the Division of Trading and Markets and the Division of Enforcement.

(d) *Appeal to the Commission.* Written fifteen days of service of the hearing officer's order under paragraph (c) of this section, the applicant or the Division of Enforcement may file with the Commission an application for review thereof, together with supporting argument and proof of service on the other party. The Commission may in its discretion grant review of the hearing officer's order. Should the Commission refuse to grant review, the hearing officer's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in accordance with the provisions of § 3.50(a).

§3.54 Default.

(a) *Failure to timely file a submission.* If the applicant fails to file a timely written submission in accordance with § 3.53:

(1) The applicant will be deemed to have waived the right to submit evidence in writing on all issues and the facts stated in the notice shall be deemed to be true for the purpose of finding that the applicant is subject to a statutory disqualification under section 8a(2) of the Act; and

(2) Twenty days after the date the notice of intent to deny provided under § 3.53(a) is served upon the applicant such notice shall be effective as a final order of the Commission denying registration. The Director of the Division of Trading and Markets or the Director's designee shall serve written confirmation upon the applicant in accordance with the provisions of §3.50(a) that such registration has been denied.

(b) *Vacating of order.* Notwithstanding the foregoing, an applicant for registration against whom an order referred to in paragraph (a)(2) of this section is effective may file a petition and supporting affidavit with the Director of the Division of Trading and Markets if the notice under §3.52 was not timely received by the applicant. Upon receipt of such a petition, such order shall be vacated, and the Director of the Division of Trading and Markets shall serve upon the applicant the written notice required under §3.52. The procedures set forth in this paragraph shall be available only once to an applicant.

§ 3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time serve notice upon a registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(2) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the registrant is subject to such statutory disqualification; and

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant shall be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in § 3.53(a). Such written submission must be served upon the Division of Trading and Markets and the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Trading and Markets and the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(d) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the registrant is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Division of Trading and Markets or the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order is served upon the registrant in accordance with § 3.50(a), until a final order with respect to the order to show cause has been issued: *Provided,* That if the sole basis upon which the registrant is subject to a statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect which shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (k) of this section is received. A copy of such order shall be served upon the Division of Trading and Markets and the Division of Enforcement.

(f) *Response.* Within twenty days of the date of the order to show cause, the registrant shall file a written response which may include briefs, affidavits and supporting memoranda, but in any event shall be limited in content to:

(1) Evidence, not previously set forth in any written submission filed under paragraph (b) of this section, challenging the accuracy of the allegations establishing the statutory disqualification;

(2) The existence of any facts which constitute a clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration of the registrant would be in the public interest; or

(3) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is

willing to supervise the activities of the registrant subject to such restrictions as the Administrative Law Judge shall impose: *Provided*, That, with respect to such sponsor, (i) an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of section 6(b), 6(c), 6d or 8a of the Act is not pending; and (ii) in the case of a sponsor which is a futures commission merchant, the sponsor is not subject to the reporting requirements of § 1.12(b) of this chapter.

(g) *Reply.* Within ten days after receipt of the response of the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(h) *Oral hearings.* Oral hearing shall not be granted except under extraordinary circumstances and upon written request, which shall include the issues to be addressed, the evidence to be adduced and a showing of compelling need. If the Administrative Law Judge determines to grant a request for oral hearing, such hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR Part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(i) *Order.* (1) Upon receipt of a response, and any reply thereto, the Administrative Law Judge shall within thirty days, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why his registration should not be revoked and shall issue an order accordingly, which shall be deemed to be a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (k) of this section is filed. If the Administrative Law Judge finds that the registration of the registrant should not be revoked, the Administrative Law Judge may issue an order further suspending or, in the case of an associated person, restricting the registration of the registrant. Any such order shall be served upon the registrant, the Division of Enforcement and the Division of Trading and Markets in accordance with the provisions of § 3.50(a).

(2) Notwithstanding the sponsor's written confirmation under paragraph (f)(3) of this section, the Administrative Law Judge may issue an order revoking or further suspending the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under section 8a(2) of the Act as a result of his conviction of a felony or misdemeanor under section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a restricted registration and was found to have failed to conform to such restriction; or

(v) The associated person willfully made any material false or misleading statement or willfully omitted to state any material fact in any written submission filed under this section as to any facts which would constitute statutory disqualifications under section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made any false or misleading statement of a material fact in the confirmation referred to in paragraph (d)(3) of this section or willfully failed to state any material fact that was required to be stated therein.

(j) *Default.* 1. If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default, and the Administrative law Judge shall within fifteen days thereafter, upon a finding that service was effected pursuant to § 3.50(a), enter an order revoking the registrant's registration based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the notice provided in accordance with paragraph (a) of this section and any written reply submitted by the Division of Trading and Markets or the Division of Enforcement. Any such order shall be served upon the registrant in accordance with the provisions of § 3.50(a) and shall be deemed a final order of the Commission five days after the date it is served upon the registrant.

(2) Notwithstanding the foregoing, if the Administrative Law Judge issues an order under paragraph (j)(1) of this section revoking the registration of the registrant, the registrant may file a petition and supporting affidavit with the Administrative Law Judge setting forth the reasons the registrant failed to file a response to the order to show cause. Upon receipt of such a petition, the Administrative Law Judge may, for good cause shown, vacate such order.

(k) *Appeal to the Commission.* Within fifteen days of service of the Administrative Law Judge's order under paragraph (e)(2), paragraph (i) or paragraph (j)(2) of this section, the registrant or the Division of Enforcement may file with the Commission an application for review thereof, together with supporting argument and proof of service on the other party. The Commission may in its discretion grant review of the Administrative Law Judge's order. Should the Commission refuse to grant review, the Administrative Law Judge's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in accordance with the provisions of § 3.50(a).

§ 3.56 Applicability of the Rules of Practice.

With exception of §§ 10.2, 10.4 through 10.11, and 10.12(a)(3) through 10.12(g), or unless otherwise provided in §§ 3.52 through 3.55 herein, the provisions of the Commission's Rules of Practice, 17 CFR Part 10, shall not apply in any proceeding to deny, suspend, revoke or restrict registration pursuant to section 8a(2) of the Commodity Exchange Act.

§§ 3.57—3.59 [Reserved]

§ 3.60 Authority to deny, condition, suspend, revoke or place restrictions upon registration pursuant to secton 8a (3) and (4) of the Act.

On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time give written notice to any applicant for registration or any registrant in any capacity under the Commodity Exchange Act that:

(a) The Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act;

(b) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, conditioned, suspended, revoked or restricted. If the notice proposes conditioning or placing of restrictions upon registration, the notice shall specify these conditions or restrictions;

(c) The applicant or registrant is entitled to a hearing at which the applicant or registrant may challenge the accuracy of the allegation set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted or should not be conditioned, suspended, revoked or restricted.

(d) A hearing for these purposes may be obtained by filing a written request with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, within twenty days after the date the notice is served on the applicant or registrant, which shall state whether the applicant or registrant admits or denies or does not have and is unable to obtain sufficient information to admit or deny each allegation set forth in the notice; and

(e) If the applicant or registrant does not timely request a hearing:

(1) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under section 8a (3) or (4) of the Act; and

(2) The hearing officer may thereafter decide whether to deny, condition, suspend, revoke, or place restrictions upon registration based upon the facts set forth in the notice.

§ 3.61 Request for hearing.

(a) If an applicant or registrant should request a hearing, an adjudicatory proceeding on the question of whether the applicant or registrant is subject to a statutory disqualification under section 8a (3) or (4) of the Commodity Exchange Act shall thereafter be conducted and concluded in accordance with the Commission's Rules of Practice, 17 CFR Part 10.

(b) For purposes of that proceeding:

(1) The notice given in accordance with § 3.60 shall be treated as a duly authorized complaint by the Division of Enforcement seeking the relief specified therein; and

(2) The request for hearing shall be treated as an answer.

§ 3.62 Waiver of hearing.

If no request for a hearing is received by the Hearing Clerk within twenty days after a notice has been given in accordance with § 3.60, the Hearing Clerk shall transmit the record to a hearing officer who shall determine whether the applicant or registrant is subject to a statutory disqualification and thereafter issue an order under section 8a(3) or 8a(4) of the Act denying, suspending, revoking, conditioning or placing restrictions upon registration based upon the notice with proof of service, an appropriate showing that a hearing has not been requested, and the evidence of the statutory disqualification.

§ 3.63 Service of order issued by a hearing officer.

(a) A copy of any order issued pursuant to § 3.62 shall be served promptly upon the applicant or registrant, the Division of Trading and Markets and the Division of Enforcement in accordance with the provisions of § 3.50(a) and shall be deemed a final order of the Commission fifteen days after the date of such service, unless a timely application for review under paragraph (b) of this section is filed.

(b) Within fifteen days after such service, the applicant, the registrant or the Division of Enforcement may file with the Commission a petition for review setting forth the grounds in support thereof. The petition for review of an applicant or registrant shall not be based upon any matter other than those as to which the applicant or registrant had notice and opportunity for hearing under § 3.60. Should the Commission refuse to grant review, the hearing officer's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in a manner in accordance with the provisions of § 3.50(a).

Subpart D—Notice Under Section 4k(5) of the Act

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of § 3.12 or § 3.16 or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should know such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by mail to the Commission at its Washington, D.C. office (Attn: Assistant Director for Registration, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581).

(b) *Unlawful to act as an associated person.* Upon the earlier of notification to the Commission by the registrant pursuant to paragraph (a) of this section, or actual receipt of notice to the registrant pursuant to § 3.50(b)(1) of this part, that an associated person of the registrant or an applicant for registration as an associated person may be subject to a statutory disqualification as set forth in section 8a(2) of the Act, it shall be unlawful for the registrant to permit such person to act in the capacity of an associated person of the registrant until the Commission determines that such person should nonetheless be registered.

§§ 3.71–3.74 [Reserved]

Subpart E—Delegation and Reservation of Authority

§ 3.75 Delegation and reservation of authority.

(a) The Commission hereby delegates, until such time as it orders otherwise, the authority to perform all functions specified in Subparts B through D to the persons authorized to perform them thereunder.

(b) Nothing in this subpart shall prevent the Commission from exercising the authority delegated therein.

(c) The Commission reserves to itself the decision in any case: (1) To proceed by order, upon notice but without a hearing, to deny, suspend, condition or restrict the registration of any person pursuant to section 8a(2) of the Act, or (2) to institute a proceeding pursuant to section 6(b) of the Act to determine whether to deny, condition, suspend, place restrictions upon or revoke the registration of any person for the reasons described in subpart C or for other good cause.

(d) The Commission may, by order of delegation, authorize a futures association registered pursuant to section 17 of the Act to perform all or any portion of the registration functions under subparts B through D in accordance with rules or procedures adopted by such futures association and submitted to the Commission pursuant to section 17(j) of the Act and subject to the applicable provisions of the Act.

Appendix A—[Removed]

9. Part 3 is proposed to be amended by removing Appendix A.

PART 10—RULES OF PRACTICE

10. Section 10.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning or restricting of registration as a futures commission merchant, introducing broker, or associated person, floor broker, commodity pool operator or commodity trading advisor pursuant to sections 6(b), 8a(3) and 8a(4) of the Act, 7 U.S.C. 9, 12a(3), 12a(4), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6 and 6(a) of the Act, 7 U.S.C. 8;

* * * * *

Issued in Washington, D.C. on October 26, 1983 by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-29800 Filed 11-1-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[LR-219-83]

Deposits of Railroad Retirement Tax Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to remittance by employers of railroad retirement tax to the Railroad Retirement Account.

DATES: The public hearing will be held on Wednesday, December 14, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, November 30, 1983.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-219-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6302 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register** (see FR Doc. 83-29762).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, November 30, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83-29763 Filed 10-28-83; 4:37 pm]

BILLING CODE 4830-01-M

26 CFR Part 31

[LR-219-83]

Deposits of Railroad Retirement Tax; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulatory amendments relating to remittance by employers of railroad retirement tax to the Railroad Retirement Account. Changes to the applicable tax law were made by the Railroad Retirement Solvency Act of 1983, which requires, among other things, (a) that certain railroad employers remit railroad retirement tax more rapidly and more frequently than before and (b) that payments to the Railroad Retirement Account be allocated more rapidly than before. The proposed amendments would, if promulgated, implement the Act's requirements regarding remittance of such tax.

DATES: Written comments must be delivered or mailed by December 2, 1983. This relatively brief comment period is necessitated by the January 1, 1984, effective date set by the Act with respect to these provisions. These amendments are proposed to be effective with respect to railroad retirement tax withheld or imposed after December 31, 1983.

ADDRESS: Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-219-83), 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Divisions, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR Part 31) under section 6302(c) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 226 of the Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76; 97 Stat. 426). These amendments are proposed to be issued under the authority contained in section 6302(c) (68A Stat. 775; 26 U.S.C. 6302(c)) and section 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Explanation of Provisions

Currently, non-railroad employers who have $500 or more of undeposited social security and withheld income taxes at the end of a month must remit those taxes through the Federal Tax Deposit (FTD) system at an authorized financial institution within 15 days after the end of that month. However, employers who have $3,000 or more of such undeposited taxes at the end of any eighth-monthly period must deposit those taxes within 3 banking days after the end of the eighth-monthly period.

Although railroad and non-railroad employers are subject to the same deposit requirements for withheld Federal income taxes, railroad employers currently are required to make only one deposit per month of undeposited railroad retirement taxes of $100 or more under sections 3202 and

3221. These deposits must be made within 15 days after the end of the first or second month of a calendar quarter in which such taxes were withheld or imposed and within one month after the end of the third month of a calendar quarter. The Railroad Retirement Solvency Act of 1983 mandates that, effective on and after January 1, 1984, the schedule for depositing railroad retirement taxes be revised so that it will coincide with the schedule which applies to non-railroad employers for purposes of depositing social security and withheld income taxes.

In its report on the Act, the House Ways and Means Committee requested,

"[W]hen the Secretary of the Treasury accelerates the deposit schedule, he will take the actions necessary to ensure that the Railroad Retirement Account does not suffer the loss on interest income due to delays in transferring payroll tax deposits to the Railroad Retirement Account. One method of accomplishing this goal would be to require that employers making relatively large deposits of railroad retirement taxes use the Treasury Financial Communication System (TFCS) when depositing such taxes." H.R. Rep. No. 30, Pt. 2, 98th Cong., 1st Sess. 30 (1983).

To accomplish this the proposed regulations would require relatively large railroad employers to make their railroad retirement tax deposits by means of a wire transfer to the Treasury, in accordance with a revenue procedure to be issued in the future. This would allow Treasury to credit and invest funds to the account of the Railroad Retirement Board several days earlier than would otherwise be the case. For this purpose, a "large railroad employer" is defined as one which had at least $1,000,000 of railroad retirement taxes for the year 2 years prior to the current calendar year.

The proposed regulations do not change the existing requirement that railroad retirement taxes be deposited separately from social security and withheld income taxes.

Non-Applicability of Executive Order 12291

It has been determined that this notice of proposed rulemaking is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the order dated April 29, 1983.

Regulatory Flexibility Act

Although this document proposes legislative regulations under section 6302(c) of the Internal Revenue Code of 1954, the Internal Revenue Service has concluded that the amendments proposed herein do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) since these revisions were mandated by section 226 of the Railroad Retirement Solvency Act of 1983.

Comments—Public Hearing

Before adoption of these proposed amendments, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the Federal Register.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed amendments is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 31 are as follows:

PART 31—[AMENDED]

Section 31.6302(c)–2 is amended as follows:

1. Paragraph (a)(2) is redesignated as paragraph (a)(3), and the phrase "beginning after March 31, 1964," in paragraph (a)(3) as so redesignated is removed and the phrase "before January 1, 1984," is inserted in lieu thereof.

2. Paragraph (a)(1) is redesignated as paragraph (a)(2), *"In general: before 1984"* is inserted as the heading of paragraph (a)(2) as so redesignated in lieu of *"In general"*, and the phrase "before January 1984" is inserted immediately following the term "any calendar month" therein.

3. A new paragraph (a)(1) is added. The added provisions read as follows:

§ 31.6302(c)–2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.

(a) *Requirement*—(1) *In general; after 1983.* In the case of a calendar month which begins after December 31, 1983, if, at a time prescribed under § 31.6302(c)–1(a)(1) (i) or (iv) for the deposit of undeposited taxes, the aggregate amount of undeposited employee tax withheld after December 31, 1983, under section 3202 and employer tax imposed after December 31, 1983, under section 3221 equals an amount required to be deposited under § 31.6302(c)–1(1)(a) (i) or (iv), the employer shall deposit such undeposited railroad retirement taxes at such time in the manner prescribed in § 31.6302(c)–1(a)(1) (i) or (iv). Notwithstanding the preceding sentence, if, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded $1 million, such employer shall deposit his undeposited railroad retirement taxes required to be deposited for the current calendar year in accordance with Revenue Procedure ——— (relating to transfers by wire to the Treasury).

* * * * *

(Sec. 6302(c), 68A Stat. 775; 26 U.S.C. 6302(c). Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, Internal Revenue Code of 1954)

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 83-29762 Filed 10-28-83; 4:30 pm]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Educational Loan Forgiveness

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The VA (Veterans Administration) is proposing cancellation of regulations dealing with education loan forgiveness through accelerated payment of educational

assistance allowance. The law required that by January 1, 1983 States or local governmental units which wanted to participate in this program must have established a matching program. None did so. This cancellation will make clear that veterans and eligible persons may not receive education loan forgiveness through accelerated payments.

DATE: Comments must be received on or before December 5, 1983. It is proposed to make the cancellation of these regulations effective the date of final approval.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 15, 1983. Anyone visiting VA Central Office in Washington, D.C. for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202–389–2091).

SUPPLEMENTARY INFORMATION: Sections 21.1045(j), 21.4502(c) and 21.4506 are canceled. These sections dealt entirely with education loan forgiveness through accelerated payment. Since no State or local governmental unit established a matching program before the deadline of January 1, 1983, there can be no education loan forgiveness through accelerated payment. Hence, all regulations dealing with this program must be canceled.

The VA has determined that the regulations which it proposes to cancel are not major rules as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. The cancellation will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs hereby certifies that the proposed cancellation of these regulations, if made final, 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. Pursuant to 5 U.S.C. 605(b), this proposed cancellation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because no education loan forgiveness has ever occurred. Hence canceling the regulations that provide for education loan forgiveness will have no economic impact whatever.

The Catalog of Federal Domestic Assistance numbers for the program affected by this proposed cancellation of regulations 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 and recordkeeping requirements, Schools, Veterans, Veterans Administration, Vocational education, Vocational rehabilitation.

Approved: October 19, 1983.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration proposes to amend 38 CFR Part 21 as set, forth below:

§ 21.1045 [Amended]

1. In § 21.1045, paragraph (j) is removed.

§ 21.4502 [Amended]

2. In 21.4502, paragraph (c) is removed.

§ 21.4506 [Removed]

3. Section 21.4506 is removed.

[FR Doc. 83-28728 11-1-83; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; Education Loans, Flight Training, Correspondence Training

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The following regulatory provisions implement some of the provisions of the Omnibus Budget Reconciliation Act of 1981 which affect people receiving educational assistance under chapters 34, 35 and 36, title 38, United States Code.

The proposed amendments provide for the gradual elimination of flight training, reductions in the rate of reimbursement for correspondence training; and further restrictions on payment of educational loans.

DATES: Comments must be received on or before December 5, 1983.

In accordance with Pub. L. 97–35, it is proposed that the amendments to all these sections be made effective October 1, 1981.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 15, 1983. Anyone visiting the VA (Veterans Administration) Central Office in Washington, D.C. for the purpose of inspecting any comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: Sections 21.4136, 21.4137, 21.4232 and 21.4503 are amended to implement portions of the Omnibus Budget Reconciliation Act of 1981. These policy changes are required by law.

The agency has determined that these proposed regulations contain no major rules as that term is defined in Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. They will not result in any major increases in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United-States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that these proposed regulations will not, if promulgated, 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. Pursuant to 5 U.S.C. 605(b), these regulations therefore are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed changes simply conform VA regulations to amendments previously made by Pub. L. 97–35. These regulations will have no significant economic impact in themselves. Also, they deal with the entitlements of individuals; they are not directed at small entities.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these proposed regulations 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 and recordkeeping requirements, Schools, Veterans, Veterans Administration, Vocational education, Vocational rehabilitation.

Approved: October 3, 1983.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

The Veterans Administration proposes to amend 38 CFR Part 21 as set forth below:

1. In § 21.4136, paragraph (a) and footnotes 1–5 are revised as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 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[1]	[2] 171			
¼ time or less[1]	[2] 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	(4)	(4)	(4)	(4)
Flight training	(5)	(5)	(5)	(5)
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 § 21.4280(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 $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] 55 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. Enrollment 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. Those veterans and servicepersons who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The Veterans Administration considers the continuity or an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g) (Sec. 2004(b), Pub. L. 97–35)

[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. If a veteran or serviceperson enrolls in a flight course after September 1, 1980 and before September 1, 1981 and is not entitled to receive 90 percent of the established charge for the course, he or she will receive 60 percent of the established charge for the course provided he or she remains continuously enrolled in his or her program. If a veteran or serviceperson enrolls in a flight course during September 1981, and this does not form part of a continuous enrollment begun before September 1, 1981, he or she will receive 60 percent of the established charge for that portion of the course completed during September 1981. He or she will receive no payment for any portion of the course completed after September 30, 1981. If after September 30, 1981, a veteran or service person receives flight training after breaking the continuity of his or her enrollment, or after enrolling in a flight course for the first time, the Veterans Administration will make no payment for the flight training. The Veterans Administration will consider the continuity of the enrollment broken any time 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). (Secs. 2003 and 2006, Pub. L. 97–35) (38 U.S.C. 1677, 1682, 1786, 1787)

* * * * *

2. In § 21.4137, paragraph (a) and footnotes 1–3 are revised as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following rates effective October 1, 1981:

Type of courses	Monthly rate
Institutional:	
Full time	$342
¾ time	257
½ time	171
Less than ½ but more than ¼ time [2]	171
¼ time or less [2]	86
Cooperative, other than farm cooperative (full time only)	276
Apprentice or on-job (full time only but see footnote [3] below) Payment designated training assistance allowance:	
First 6 months	249
Second 6 months	186
Third 6 months	124
Fourth 6 months and succeeding periods	62
Farm cooperative:	
Full time	276
¾ time	207
½ time	138
Correspondence	(4)

[1] See footnote 5 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] 55 percent of the 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 spouses 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. Those spouses and surviving spouses who are not entitled to receive 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1981. The Veterans Administration considers the continuity of an enrollment to be broken when there are more than 6 months between the servicing of lessons. Allowance paid quarterly. (38 U.C. 1734, 1786; sec. 2004(b), Pub. L. 97–35)

[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 Octobe 1, 1980, and $171 or $86 as appropriate per month, effective January 1, 1981 if the maximum allowance is not initially authorized. (38 U.SC. 1732(c)(3)

* * * * *

3. In § 21.4252, paragraph (c) is revised as follows:

§ 21.4252 Courses precluded.

* * * * *

(c) *Flight training.* The Veterans Administration may approve an enrollment in any of the following types of courses of flight training if an institution of higher learning offers the course for credit toward the standard college degree the veteran or eligible person is pursuing. The Veterans Administration otherwise will not approve an enrollment in—

(1) A course of flight training to obtain a private pilot's license or equivalent level training under chapter 34.

(2) Any other course of flight training under chapter 34 if the veteran—

(i) Enrolled in the first course of flight training in his or her program of education after September 30, 1981, or

(ii) Enrolled in the second or subsequent course in a program of flight training after September 30, 1981, and more than 6 months have elapsed since

the veteran last received flight training, or

(iii) Enrolled in the first course of flight training in his or her program of education during September 1981, and the course in question is any course in which the veteran first receives training after September 30, 1981, or

(3) Any course of flight training under chapter 35. (Sec. 2003, Pub. L. 97–35)

* * * * *

4. In § 21.4503, paragraph (b)(10) and (11) is added as follows:

§ 21.4503 Determination of loan amount.

* * * * *

(b) *Amount.* * * *

(10) If the enrollment period for which a loan is sought begins after September 30, 1981, the Veterans Administration may grant a loan only if—

(i) The veteran's or eligible person's delimiting date as determined by § 21.1042, § 21.1043 or § 21.3046(a), (b) or (d) has expired, or

(ii) The veteran is eligible to receive educational assistance allowance for a course of flight training and is eligible to be reimbursed at the rate of 60 percent of the established charges for tuition and fees.

(11) If a veteran or eligible person whose delimiting date as determined by § 21.1042, § 21.1043 or § 21.3046(a), (b) or (d) has not expired seeks a loan for an enrollment period that begins before October 1, 1981 and ends after September 30, 1981, the Veterans Administration will calculate the loan amount by—

(i) Considering the loan period to extend only through September 30, 1981, and

(ii) Prorating the veteran's or eligible person's financial resources and actual cost of attendance accordingly. (38 U.S.C. 1798(a); secs. 2005 and 2006, Pub. L. 97–35)

[FR Doc. 83-29729 Filed 11-1-83; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21323]

The Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: Action taken herein extends the comment period in this proceeding involving the use of subcarrier frequencies in the aural baseband of TV transmitters. This action is taken in response to a request by the Electronics Industries Association. This action is intended to allow interested parties time to evaluate a comprehensive report on proposed TV multichannel sound transmission and companding systems, to be issued on or about October 31, 1983. The intended effect of this action is to improve the quality of the comments to be filed in this proceeding.

DATES: New dates for filing comments and reply comments are December 30, 1983, and January 30, 1984, respectively.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Federal Communications Commission, Washington, D.C. 20554 (202) 632–9660.

Order Extending Time for Filing Comments and Reply Comments

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters, Docket No. 21323.

Adopted: October 24, 1983.
Released: October 28, 1983.
By the Chief, Policy and Rule Division.

1. On July 28, 1983, the Commission adopted a Further Notice of Proposed Rule Making ("Further Notice") in the above-entitled matter which was released on August 15, 1983, and published in the **Federal Register** (48 FR 37457) on August 18, 1983.

2. On October 14, 1983, The Consumer Electronics Group of the Electronics Industries Association ("EIA") filed a "Petition for Extension of Comment Period" requesting that the comment and reply comment dates be extended to December 30, 1983 and January 30, 1984, respectively. The time would allow interested parties to evaluate an extensive and detailed technical report on proposed TV multichannel sound transmission and companding systems. This report is in the final stages of preparation by EIA's Multichannel Sound Subcommittee and is scheduled for release on October 31, 1983. We agree that industry consideration and evaluation of this report will materially improve the quality of the comments to be submitted in this proceeding.

3. Accordingly, it is ordered that the time for filing comments in Docket No. 21323 is extended to December 30, 1983, and January 30, 1984, respectively.

4. This action is taken pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-29684 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 79–265; RM–2023; RM–2255; RM–3228; FCC 83–483]

Nighttime Power Limitations and Antenna Systems for Class IV AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Comments are invited on proposals to increase the nighttime power of Class IV AM broadcast stations. This step would increase the signal-to-noise ratio within the established nighttime service areas of these stations. Improved ability to overcome interference and render better service would result. Noise increases have heightened the need for this action.

DATES: Comments are due by December 7, 1983 and replies by December 15, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Frederic Schottland (engineer) or Jonathan David (attorney) of the Mass Media Bureau, Federal Communications Commission , Washington, D.C. 20554. Telephone numbers, respectively are (202) 632–5414 and (202) 632–7792.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making and Memorandum Opinion and Order

In the matter of Nighttime Power Limitations and Antenna Systems for Class IV AM Broadcast Stations; BC Docket No. 79–265, RM–2023, RM–2255, RM–3228; FCC 83–483.

Adopted: October 19, 1983.
Release: October 27, 1983.

By the Commission: Commissioner Quello absent.

Background

1. The issue of increased nighttime

power for Class IV AM stations [1] was first raised in three rule making petitions (RM–2023, 2255 and 3228) filed in 1972, 1973 and 1978, respectively. In RM–2023, Community Broadcasters Association, Inc., proposed an across-the-board power increase from the present limit of 250 watts to 1000 watts. In RM–2255, Paul Dean Ford proposed permitting an increase in antenna height for Class IV stations to as much as 5/8 wavelength. Finally, in RM–3228, Douglas Broadcasting Corporation proposed increasing the nighttime power limit to 1000 watts along with the use of 5/8 wavelength antenna structures.

2. In response to these petitions, and in order to develop a U.S. position to be presented at the Region 2 Administrative Radio Conference on AM broadcasting,[2] the Commission issued a *Notice of Inquiry* in 1979.[3] That *Notice* raised a series of questions designed to explore whether a nighttime power increase for Class IV stations to 1000 watts would be desirable, and if so, to determine the procedures to be employed to implement any such increase. In this latter regard, particular concern was expressed over the feasibility of extending antenna height requirements as had been suggested in two petitions.

3. Virtually all of the comments submitted in response to the *Notice* supported a nighttime power increase to 1000 watts for Class IV stations. Thus, at the First Session of the Region 2 Conference, the U.S. proposed that Class IV stations (under Conference terminology referred to as Class C stations) be permitted to operate with at least 1000 watts power at night. In fact, this proposal was adopted at the First Session. However, the governing agreements with Canada and Mexico precluded use of such power by U.S. Class IV stations pending renegotiation of these agreements. Accordingly, the U.S. took steps to avoid any potential conflict with other nations in the Region by placing its Class IV stations in the southeastern U.S. in the Regional Plan with a nighttime power of 1000 watts [4] Since then, the necessary bilateral negotiations with Canada and Mexico have taken place. Although final drafts of the proposed bilateral agreements with these countries have not been completed, tentative agreements have been developed, with implementation anticipated in late 1983 and early 1984 for Canada and Mexico, respectively. Now that the international impediments to increased nighttime power for Class IV stations are about to be removed, it is appropriate to proceed with consideration of specific rule changes to make such an increase possible.

The Proposal

4. Based on our review of the comments filed in response to the *Inquiry*, it is clear that there are serious nighttime reception problems for Class IV stations. Generally, man-made electrical noise is causing a degradation in the nighttime service by Class IV stations. Operating with a maximum power of only 250 watts, these stations are unable to overcome the noise problems. However, a power increase could be expected to help alleviate this problem by increasing the signal-to-noise ratio. Likewise, an increase in power could assist some Class IV stations in the Southeastern U.S. which receive interference from stations elsewhere in the Region in recouping lost service resulting from such interference.

5. In view of the foregoing, the Commission believes that a nighttime power increase for Class IV stations should be proposed. As an alternative to an across-the-board power increase, two of the petitioners have suggested an approach based on increasing antenna heights. As discussed further at paragraph 9, this would be of no help to the many Class IV stations which would be unable to increase their antenna heights. Therefore, it seems preferable to propose an across-the-board rule change to permit Class IV stations on local channels to increase their nighttime power from the current limit of 250 watts to 1000 watts (one kilowatt). This proposal, would permit all currently authorized Class IV stations, after appropriate application, to increase their nighttime power by a factor of four. Thus, Class IV stations currently operating with 250 watts at night would be permitted to increase nighttime power to one kilowatt. Stations currently authorized to operate with nighttime power of 100 watts would be permitted to increase their nighttime power to 400 watts. Some Class IV stations may not be able to operate with daytime power of one kilowatt because of co-channel and/or adjacent channel protection requirements. If adopted, the Commission's proposal would permit those stations to use higher power at night than during the day. Such higher power nighttime use is not permitted under the existing rules.

6. *Structural Economic Benefits*—In addition to the benefits to listeners from increased nighttime service, the proposed rule changes would be expected to have significant desirable economic effects on the viability and economic position of individual Class IV radio stations and on the competitive structure of radio markets. The expanded reach that would be possible through increased nighttime power would be expected to increase the potential revenue base of Class IV stations. This would improve the ability of these stations to provide quality program service and to compete more effectively with other stations that operate without nighttime power restrictions. The Commission believes that these anticipated economic effects are desirable and consistent with its goals to further economic competition in radio markets and to rely on the economic forces in such markets to achieve its objective of increased public service by the radio industry.

7. *Other Matters*—The Commission desires to reduce the administrative impact upon licensees and the Commission that would result from the across-the-board nighttime power increase being proposed. Accordingly, the Commission proposes to redefine such nighttime power increases as minor changes, thereby greatly decreasing the administrative difficulties in filing and processing these applications. In fact, most Class IV stations already operate with 1000 watts daytime. Thus, no construction is needed to operate with this power at night. Although an application would be required to authorize a nighttime power increase for these stations, it seems unnecessary to use a two-step application procedure to implement the increase in power since ordinarily no construction would be necessary. For stations not operating with 1000 watts daytime, however, we do contemplate separate permit and license applications. This is necessary so that matters such as 2/25 mV/m overlap with stations on second adjacent channels could be considered.

[1] Class IV stations operate on a full-time basis on one of six local channels. They operate with a maximum power of 1000 watts daytime and 250 watts at night.

[2] The purpose of the Conference was to develop an AM broadcasting agreement for Region 2 which includes the Americas, Greenland and the Caribbean. The first session was held during March 1980 and the second session was held during November and December of 1981. Subsequently, the Commission has been involved in a series of bilateral negotiations with Canada and Mexico on this issue and on other AM matters of common interest.

[3] Adopted October 16, 1979, 44 FR 62307 (1979).

[4] As a result of having the Class IV stations in the Southeastern U.S. included in the Rio Plant at 1000 watts, the need to consider the impact on other Region 2 nations was virtually eliminated.

8. Comments are sought on all aspects of the proposed changes in the Commission's rules to permit an increase in the nighttime power of Class IV stations to a maximum of 1000 watts.[5] In addition to general comments on such an increase, parties may wish to comment on the treatment of stations now operating with 250 watts or 500 watts daytime. Interested parties are invited to offer suggestions on the timing and methodology for effectuating such a power increase.

Increased Antenna Height

9. As noted above, we have decided not to propose the increased antenna height approach to Class IV power increases urged by Paul Dean Ford and Douglas Broadcasting Corporation. It is true that an increase in antenna height could be used to produce an increase in groundwave radiation, but this could be accomplished to any significant degree only by the construction of taller towers of 1/2 to 5/8 wavelength. For a variety of reasons, it appears that this approach is not a feasible one to use alone or in combination.[6] If some, but not all of the Class IV stations increase their antenna height, their present service areas would not be maintained; some would increase at the expense of the reduction of others. Further, construction to increase antenna height often is not feasible because of economic or technical restraints. In some cases, interference problems prevent such an increase. Likewise, municipal codes or aeronautical considerations can preclude such tower construction. Because only a few Class IV licensees could benefit, it would not be fair to limit the benefits of power increases to those stations able to increase antenna height. In addition, it would lead to gains of service to the increasing stations at the cost of those unable to obtain it. Accordingly, we must reject this approach and therefore will deny the two petitions (RM–2255 & RM–3228) which advocate it.

10. Accordingly, it is ordered, That the petitions for rule making filed by Paul Dean Ford (RM–2255) and by Douglas Broadcasting Corporation (RM–3228) ARE DENIED.

11. *Regulatory Flexibility Initial Analysis:*

I. Reason for Action

A substantial number of Class IV stations on local channels appear to suffer noticeable nighttime interference from man-made sources within their otherwise interference free contours. In addition, Class IV stations are limited to an antenna power input of 250 watts, whereas elsewhere in the Western Hemisphere such stations are authorized to operate with much greater nighttime antenna input power, often to the detriment of U.S. Stations.

II. The objective

The Commission proposes to increase the nighttime power of Class IV station's nighttime antenna power input to four times its currently authorized level. Such an across-the-board power increase would double the received signals in the service areas of Class IV stations, thus reducing the signal degradation caused by man-made noise or other sources of interference.

III. Legal basis

Action as proposed is in furtherance of Section 303 of the Communications Act of 1934, as amended, which charges the Commission to determine the power that each station shall use so as best to serve the public convenience, interest, or necessity.

IV. Description, potential impact and number of small entities affected

The only group of small entities affected by this proposal are the Class IV stations themselves. This proposal would provide them with substantial relief from the nightime signal degradation they now suffer. Except for those few stations which might choose not to take advantage of the opportunity to increase their nighttime power, there would be a potential favorable impact on all 1072 small entities currently assigned to the six Local Channels.

V. Recording, record keeping and other compliance requirements:

None.

VI. Federal rules which overlap duplicate or conflict with this rule:

None.

VII. Any significant alternative minimizing impact on small entities and consistent with stated objective:

None.

12. For the purpose of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered 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 comment/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a 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 summary of that presentation, on the day of 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, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

13. *This Notice of Proposed Rule Making* is issued pursuant to authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended. Interested parties may file comments on or before December 1, 1983, and reply comments on or before December 15, 1983. All relevant and timely comments filed in response to this *Notice* will be considered by the Commission. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding shall be furnished the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided the fact of the Commission's reliance is noted in the Report and Order.

14. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's

[5] To effect the changes proposed will require amendment of several sections of the Commission's rules, most notably Sections 73.14, 73.21, 73.27, 73.182, 83.189, 73.1665(b) and 73.3571. In addition, since these are minor change applications, the multiple ownership rules would not preclude their grant even if overlap with a commonly owned station resulted.

[6] Moreover, it is no longer necessary to consider this approach now that international impediments to increasing power are being removed.

Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

15. For further information concerning this proceeding, contact Jonathan David, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-29683 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1125; RM 4531]

FM Broadcast Stations in Mount Bullion, California; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Class B FM Channel 260 to Mount Bullion, California, as that community's first FM assignment, in response to a petition filed by Eric R. Hilding.

DATES: Comments must be filed on or before December 5, 1983, and reply comments must be filed on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634-6350.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Mount Bullion, California) MM Docket No. 83-1125, RM-4531.

Adopted: October 6, 1983.

Released: October 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed June 24, 1983, by Eric R. Hilding ("petitioner"), proposing the assignment of Class B FM Channel 260 to Mount Bullion, California, as that community's first FM service. Petitioner submitted information in support of the channel and expressed his interest in applying for the channel, if assigned. The proposed assignment meets all spacing requirements, based on the issuance of a construction permit for Station KRFD (Channel 260), in Marysville, California.

2. In view of the fact that the proposed assignment could provide a first FM broadcast service to Mount Bullion, California, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Assignment, § 73.02(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Mount Bullion, California		260

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Eric R. Hilding, P.O. Box 1300, Freedom, CA 95019.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or

before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspeciton of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29680 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1131; RM-4571]

FM Broadcast Station in Silverton, Colorado; Proposed Changes in Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to substitute Class C FM Channel 279 for Channel 280A at Silverton, Colorado, and to modify the Class A license of Station KDRW(FM), in response to a petition filed by Longhorn Communications, Incorporated.

DATES: Comments must be filed on or before December 5, 1983, and reply comments must be filed on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Silverton, Colorado) MM Docket No. 83-1131, RM-4571.

Adopted: October 6, 1983.
Released: October 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Longhorn Communications, Incorporated ("petitioner"), licensee of FM Station KDRW (Channel 280A), Silverton, Colorado, which seeks to substitute Class C FM Channel 279 for Channel 280A, and to modify its license to specify operation on the Class C channel. The channel can be assigned in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. Petitioner states that because Silverton is located in a mountainous area, its request is founded on a desire to provide expanded coverage not only to area residents, but also to persons residing in nearby communities.

3. In view of the above, we have determined that the proposal merits further consideration. Therefore, as requested by petitioner, we will propose to modify the license of Station KDRW to specify operation on Channel 279. However, in conformity with Commission precedent, as expressed in *Cheyenne, Wyo.*, 62 FCC 2d 63 (1976), should another interest in the assignment be shown, the proposed modificaiton could not be made and the channel, if assigned, would be open to competing applications.

4. An *Order to Show Cause* to the petitioner is not required since consent to the modification of its license is indicated by its request for the Class C channel.

5. Also pending before the Commission is a proposal to assign Class C Channel 297 to Silverton, Colorado, in MM Docket No. 83-738.

6. Accordingly, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Assignments as follows:

City	Channel No.	
	Present	Proposed
Silverton, Colorado	257A, 280A,	257A, 279, and 297

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner, as follows: Longhorn Communications, Incorporated, Attn: Theresa S. Kessler, 1911 Main Avenue, Suite 254, Durango, Colorado 81301.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which the Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29679 filed 11-1-83; 8:45 am]
BILLING CODE 6712-0-M

47 CFR Part 73

[MM Docket No. 83-1133; RM-4580]

FM Broadcast Stations in Somerset, Kentucky; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 272A to Somerset, Kentucky, in response to a petition filed by Cumberland Communications, Inc. The proposal could provide for a second FM service to Somerset.

DATES: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of §73.202(b) Table of Assignments, FM Broadcast Stations (Somerset, Kentucky) MM Docket No. 83-1133, RM-4580.

Adopted: October 6, 1983.
Released: October 21, 1983.

By the Chief, Policy and Rules Division.

1. Cumberland Communications, Inc.[1] ("petitioner"), on July 22, 1983, submitted a petition for rule making seeking the assignment of Channel 272A to Somerset, Kentucky, as that community's second FM channel. Petitioner stated its intention to apply for the channel if assigned.

2. We have determined that a Channel 272A assignment to Somerset, Kentucky, will require a site restriction of 3.1 miles southwest of the city. This site restriction is necessary to avoid a short-spacing to Station WLJC(FM) (Channel 272A), Beattyville, Kentucky.

3. I view of the fact that the proposal could provide for a second FM service to Somerset, the Commission proposes to amend the FM Table of Assignment, §73.202(b) of the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Somerset, Kentucky	244A	244A, 272A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follow: Cumberland Communications, Inc., P.O Box B, Somerset, Kentucky 42501.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment

[1] Cumberland Communications, Inc. is the licensee of AM Station WTLO, Somerset, Kentucky.

which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29673 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1126; RM-4516]

FM Broadcast Stations in Truro, Massachusetts; Proposed Changes in Table Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 272A to Truro, Massachusetts, as that community's first FM assignment, in response to a petition filed by John T. Galanses.

DATES: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Truro, Massachusetts) MM Docket No. 83-1126, RM-4516.

Adopted: October 6, 1983.

Released: October 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration a petition for rule making filed June 17, 1983, by John T. Galanses ("petitioner") proposing the assignment of Channel 272A to Truro, Massachusetts, as that community's first FM service. Petitioner submitted information in support of the proposal and expressed his interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the fact that the proposed assignment could provide a first local FM broadcast service to Truro, Massachusetts, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Truro, Massachusetts		272A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John T. Galenses, 205 Casa Solana, Key West, Florida 33040, Petitioner.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29681 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1134; RM-4527]

FM Broadcast Station in Norway, Michigan; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes a first FM channel assignment to Norway, Michigan, in response to a petition filed by Robert A. Sherman.

DATES: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Norway, Michigan) MM Docket No. 83-1134, RM-4527.

Adopted: October 6, 1983.

Released: October 21, 1983.

By the Chief, Policy and Rules Division.

1. On June 17, 1983, Robert A. Sherman ("petitioner") filed a petition for rule making seeking to assign Channel 232A to Norway, Michigan, as its first FM channel. Peitioner stated his intention to apply for the channel, if assigned.

2. Since Norway, Michigan, is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence in the propose assignment must be obtained.

3. In view of the fact that the proposal could provide a first local broadcast service to Norway, we shall seek comments on the proposal to amend the FM Table of Assignments (§ 73.202(b) of the Rules) with respect to the following city:

City	Channel No. Present	Proposed
Norway, Michigan		232A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirement are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Robert A. Sherman, 1039 Division, Port Huron, Michigan, 48060.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do No Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29674 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1132; RM-4586]

FM Broadcast Station in Marion, Mississippi; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 276A to Marion, Mississippi, in response to a petition filed by Larry G. Fuss, Sr. The proposal could provide a first FM service to that community.

DATES: Comments must be filed on or before December 5, 1983, and reply comments must be filed on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Marion, Mississippi), MM Docket No. 83–1132, RM–4586.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Larry G. Fuss, Sr. ("petitioner"), proposing the assignment of Channel 276A to Marion, Mississippi, as its first local FM service. Petitioner expressed his intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements with a site restriction of 2.7 miles east to avoid short-spacing to WMSI, Channel 275, in Jackson, Mississippi.

2. In view of the fact that the proposed assignment could provide a first local FM service to Marion, Mississippi, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Marion, Mississippi		276A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and area advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner (or his consultant) as follows: Larry G. Fuss, Sr., 331 Belliford Court, Mars, Pennsylvania 16046.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings of this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29672 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1130; RM-4514]

FM Broadcast Station in Folly Beach, South Carolina; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 249A to Folly Beach, South Carolina, as that community's first FM channel in response to a petition filed by John T. Galanses.

DATE: Comment must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Folly Beach, South Carolina) MM Docket No. 83-1130, RM-4514.

Adopted: October 6, 1983.
Released: October 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rulemaking filed June 15, 1983, by John T. Galanses ("petitioner"), proposing the assignment of Channel 249A to Folly Beach, South Carolina, as that community's first FM channel. Petitioner submitted information in support of the proposal and expressed his interest in applying for the channel, if assigned. A site restriction of 2.4 miles southwest of Folly Beach is required to avoid short spacing to Station WGMB (Channel 249A) in Georgetown, South Carolina.

2. In view of the fact that the assignment could provide a first local

FM broadcast service to Folly Beach, South Carolina, the Commission believes that it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with respect to the following community.

City	Channel No.	
	Present	Proposed
Folly Beach, South Carolina		249A

3. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John T. Galanses, 205 Casa Solana, Key West, Florida 33040, Petitioner.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29678 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1129; RM-4579]

FM Broadcast Stations in Jamestown Tennessee; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign a second FM channel to Jamestown, Tennessee, in response to a petition filed by Jamestown Broadcasting Company, Inc.

DATE: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communication Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations

(Jamestown, Tennessee) MM Docket No. 83-1129, RM-4579.

Adopted: October 6, 1983.
Released: October 20, 1983.

By the Chief, Policy and Rules Division.

1. Jamestown Broadcasting Company, Inc. ("petitioner"), on July 21, 1983, submitted a petition for rule making which seeks the assignment of Channel 276A to Jamestown, Tennessee, as its second FM assignment. Petitioner stated that it would apply for the channel, if assigned.

2. The proposed assignment of Channel 276A to Jamestown can be made in conformity with the minimum distance separation requirements, provided the transmitter site is located approximately 0.7 miles northeast of the city. This restriction is necessary to avoid short-spacing to Station WKDR (FM) (Channel 277), Nashville, Tennessee.

3. In view of the foregoing and the fact that the proposed assignment could provide a second FM service to Jamestown, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Jamestown, Tennessee	280A	276A, 280A

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Jamestown Broadcasting Company, Inc., c/o Barbara R. Feeherry, Tierney and Swift, Law Offices, 1925 K Street, NW., Suite 300, Washington, D.C. 20006.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponents of a proposed asignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Proceedings.* The following procedures will govern the consideration of filings in this proceedings.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanies by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29677 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1127; RM-4521]

FM Broadcast Stations in Strasburg, Virginia; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Proposed assignment of Channel 285A to Strasburg, Virginia, as that community's first FM assignment, in response to a petition filed by John T. Galanses.

DATE: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Strasburg, Virginia) MM Docket No. 83-1127, RM-4521.

Adopted: October 6, 1983.
Released: October 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed June 20, 1983, by John T. Galanses ("petitioner") proposing the assignment of Channel 285A to Strasburg, Virginia, as that community's first FM assignment. Petitioner submitted information in support of the proposal and expressed his interest on applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the fact that the proposed assignment could provide a first local FM service to Strasburg, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with respect to the following community.

City	Channel No.	
	Present	Proposed
Strasburg, Virginia	-	285A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John T. Galanses, 205 Casa Solana, Key West, Florida 33040, Petitioner.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g)(and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be

available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29682 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1128; RM-4562]

Television Broadcast Stations in Venice, Florida; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 62 to Venice, Florida, as its first television assignment in response to a petition filed by Holiday Group, Inc.

DATES: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Venice, Flroida) MM Docket No. 83-1128, RM-4562.

Adopted: October 6, 1983.
Released: October 20, 1983.

By the Chief, Policy and Rules Division.

1. Holiday Group, Inc. ("petitioner"), submitted a petition for rule making which seeks the assignment of UHF television Channel 46 to Venice, Florida, as its first television assignment. Petitioner submitted information in support of the proposal and expressed his interest in applying for the channel, if assigned.

2. Venice (population 12,153)[1], in Sarasota County (population 202,251), is located on the west coast of Florida, approximately 92 kilometers (60 miles) south of Tampa, Florida.

3. Assignment of Channel 46 to Venice would be short-spaced on the co-channel to a proposed assignment at Naples, Florida (RM-4474). However, a staff engineering study reveals that Channel 62 can be assigned to Venice in compliance with the minimum distance separation requirements.

4. In view of the foregoing and the fact that the proposed television assignment could provide a first commercial television broadcast service to Venice, Florida, the Commmssion believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Venice, Florida		62

5. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner of this proceeding, as follows: Holiday Group, Inc., c/o Colby M. May, May, Dunne & Gay, 1156—15th Street, N.W., Washington, D.C. 20005.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commissions Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published Feburary 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (see § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be

[1] Population figures are from the 1980 U.S. Census, Advance Report.

made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules).

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29676 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1135; RM-4581]

Television Broadcast Stations in Cullowhee, North Carolina; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes a first UHF television assignment to Cullowhee, North Carolina, in response to a petition filed by Greg Ryder.

DATES: Comments must be filed on or before December 5, 1983, and reply comments on or before December 20, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of §73.606(b), Table of Assignments, Television Broadcast Stations (Cullowhee, North Carolina MM Docket NO. 83-1135, RM-4581.

Adopted: October 6, 1983.
Released: October 21, 1983.

By the Chief, Policy and Rules Division.

1. Greg Ryder ("petitioner"), on July 22, 1983, submitted a petition for rule making requesting the assignment of UHF Television Channel 31 to Cullowhee, North Carolina. Petitioner stated that he, or an entity of which he is a part, will apply for the channel, if assigned.

2. Cullowhee (population 3,583) [1], in Jackson County (population 25,811), is located in western North Carolina, approximately 110 kilometers (70 miles) southeast of Knoxville, Tennessee. Cullowhee is currently without local television service.

3. In support of his proposal, petitioner submitted population data and statistics on the consumer spendable income and retail sales for Jackson County.

4. The proposed assignment of Channel 31 to Cullowhee would require a site restriction of 24.2 miles northwest of the city to avoid short-spacing to Station WGGS-TV (Channel 16), Greenville, South Carolina. In view of the large site restriction, petitioner is requested to provide a showing that the facilities he intends to use could provide the required 80 dBu city grade signal to Cullowhee in comments to this proposal.

5. In view of the fact that the proposal could provide a first local television service to Cullowhee, comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Rules, as it pertains to the following community:

City	Channel No.	
	Present	Proposed
Cullowhee, North Carolina		31-

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before December 5, 1983, and reply comments on or before December 20, 1983, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Greg Ryder, P.O. Box 172, Cullowhee, North Carolina.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See. *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do not apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the

[1] Population figures are taken from the 1980 U.S. Census, Advance Report.

consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-29675 Filed 11-1-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 31027-210]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule-related notice; 1984 initial specifications for groundfish, request for comments.

SUMMARY: NOAA proposes 1984 initial specifications for total allowable catch (TAC) amounts for the Bering Sea and Aleutian Island area target species and the "other species" category and apportionments of those TAC's between domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) for the 1984 fishing year. This action is intended to provide domestic and foreign fishermen and processors the opportunity to express their views on the proposed fishery specifications, and the extent to which the proposed specifications would ensure full use of groundfish resources and meet the anticipated needs of the U.S. fishery industry.

DATE: Comments on proposed TAC, DAH, and TALFF amounts are invited until December 1, 1983.

ADDRESS: Comments should be sent to Robert W. McVey, Director Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Copies of the Resource Assessment Document upon which the proposed TACs are based may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Fishery Biologist, NMFS, Alaska Region), 907-586-7230

SUPPLEMENTARY INFORMATION:

Background

Amendment 1 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) was approved by the NOAA Assistant Administrator for Fisheries (Assistant Adminstrator) on July 25, 1983, and the proposed implementing regulations for the amendment were published in the **Federal Register** on September 19, 1983 (48 FR 41788). Among other actions, the proposed rule sets forth the procedure by which TAC and the domestic annual processing (DAP) and joint venture processing (JVP) components of DAH are determined annually for each target species and the "other species" category. Because Amendment 1 is not expected to be implemented until January 1, 1984, and because public input on the proposed 1984 TAC, DAP, JVP, and TALFF amounts is necessary prior to NOAA's final determination on these figures, NOAA now is soliciting public comment on the proposed figures under the authority granted to the Secretary of Commerce to initiate such action under Section 305(g) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). NOAA is taking this action to provide for an orderly conversion to the framework management approach under Amendment 1 if the implementing rule for that amendment is made effective in early 1984. Public comments received on the proposed fishery specifications will be considered by NOAA when making the final determination of initial TAC, DAP, JVP, and TALFF amounts for 1984. At that time, a rule-related notice will be issued by NOAA under the authority of the final rule implementing Amendment 1 and will establish the subject TAC, DAP, JVP, and TALFF amounts as revised by public comment being solicited by this notice. If the final rule implementing Amendment 1 is not effective by January 1, 1984, the fishery will be managed under the current species-specific OY, DAH, TALFF, and reserve amounts until the final rule implementing Amendment 1 becomes effective.

Under Amendment 1, the sum of the TACs for target species and the "other species" category may not exceed the established OY range for these species: 1.4–2.0 million metric tons (mt). Using this OY range as a limit, the 1984 TACs for each target species and for the "other species" category are based on the most recent assessment by NMFS scientists on the status of groundfish stocks as presented in the Council's resource assessment document (RAD). Copies of the RAD may be obtained from the Council at the adress noted above. The total TAC for target species and "other species" category proposed by the Council for 1984 is 2.0 million mt (Table 1). This harvest level represents about a 400,000 mt increase over the current total allowable groundfish harvest for target species and the "other species" category of approximately 1.6 million mt. Most of the proposed increase in the 1984 groundfish harvest reflects increases in the abundance of Pacific cod, yellowfin sole and "other flatfish". The proposed TAC for "other

rockfish" for the first time, separates harvest amounts for the Bering Sea (Fishery Areas I, II, and III) and the Aleutian area (Fishery Area IV) to accomodate the results of resource assessment surveys that indicate separate stock units in these two areas. Previously, the TAX for "other rockfish" was combined for all four areas.

TABLE 1.—ESTIMATED 1983 DOMESTIC CATCHES AND PRELIMINARY SPECIFICATIONS OF DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FISHING (TALFF) IN THE BERING SEA/ALEUTIAN ISLANDS AREA

[All figures in metric tons]

Species	Management Area	Proposed TAC	1983 Catches (projected)		1984 preliminary specifications		
			Domestic operations	Joint ventures	DAP	JVP	TALFF
Bering Sea/Aleutian Islands:							
Pollock	Bering Sea (BS)	1,067,710	1,600	144,000	14,762	293,000	599,792
	Aleutian Islands (AI)	88,980	0	2,600	500	3,000	72,133
Pacific Ocean Perch	(BS)	1,780	10	130	1,513	0	0
	(AI)	9,520	0	20	0	50	8,042
Sablefish	(BS)	3,740	100	50	1,678	100	1,401
	(AI)	1,600	0	70	50	100	1,210
Other Rockfish	(PS)	2,760	50	10	50	20	2,276
	(AI)	9,790	0	0	0	0	6,321
Atka Mackerel		23,130	0	10,700	0	16,000	3,660
Pacific Cod		258,920	64,000	14,500	115,312	14,180	90,590
Yellowfin Sole		275,830	200	22,500	1,000	28,600	204,856
Turbots		59,610	100	100	0	100	50,589
Other Flatfish		133,400	50	11,700	100	22,000	91,341
Squid		8,900	10	10	20	20	7,525
Other Species		54,270	3,000	1,700	3,000	2,000	41,129
Total		[1] 2,000,000	69,120	208,090	137,985	379,170	1,182,845

[1] 15 percent of the total TAC, or 300,000 mt, is apportioned to the reserve and the remaining TAC is apportioned to DAP, JVP, and TALFF.

Under the proposed implementing regulations for Amendment 1, the groundfish reserve at the beginning of each year will equal the sum of 15 percent of each TAC established for target species and the "other species" category. Thus, only 85 percent of each TAC is available for apportionment to initial DAP, JVP, and TALFF amounts.

Amounts specified as DAP are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. Amounts specified as JVP are intended for harvest by U.S. fishermen for delivery and sale to foreign processors at sea in joint ventures. The amounts specified as total reserve is intended for reapportionment to DAP and/or to JVP if those amounts are underspecified. That portion of the reserve not reapportioned to DAP or JVP is available for reapportionment to TALFF.

The Magnuson Fishery Conservation and Management Act (Magnuson Act), gives priority to U.S. fish processors when apportioning groundfish among user groups. Under section 204(b)(6)B)(i) of the Magnuson Act, the Secretary of Commerce may apportion to JVP only those amounts of U.S.-caught groundfish that are excess to amounts U.S. fish processors will process during any one fishing year.

To best determine the intentions of the U.S. industry, the Alaska Regional Director of the National Marine Fisheries Service (Regional Director) conducted a survey during August and September 1983 to determine preliminary the amounts of groundfish that U.S. processors intend to process or that domestic fishermen intend to deliver to foreign processors in joint ventures. The Council reviewed the results of this survey at its September 28–29, 1983, meeting, and recommended to the Regional Director preliminary specifications of DAP and JVP for 1984. The Council set these amounts equal to the amounts harvested in 1983 plus any additional amounts that are expected to be harvested in 1984 as indicated from results of the Regional Director's survey of the groundfish industry. The specifications proposed by the Secretary by this notice (Table 1) are the same as those recommended by the Council with the following exceptions:

1. The Secretary's proposed DAP and JVP specifications for Pacific ocean perch in the Bering Sea are 1,513 mt and zero mt, respectively, rather than the 1,664 mt DAP and 50 mt JVP recommended by the Council. The Secretary is proposing the revised amounts so that the TAC for Pacific ocean perch in the Bering Sea (1,780 mt) is not exceeded and DAP receives priority consideration consistent with section 204(b)(6)(B)(i) of the Magnuson Act. If determined necessary and permissible under the final rule implementing Amendment 1, the JVP specifications for Pacific ocean perch in the Bering Sea may be increased during the 1984 fishing year through the reapportionment of reserves.

2. The Secretary's proposed DAP and JVP specifications for squid are both 20 mt and the DAP and JVP specifications for the "other species" category are 3,000 mt and 2,000 mt respectively. The Council's recommended DAP and JVP specifications for squid and the "other species" category were zero. The increases in DAP and JVP specifications are proposed by the Secretary to provide for a by-catch of these species in other DAP and JVP target fisheries.

Comments are invited on the adequacy of the preliminary fishery specifications set forth in Table 1. Any additional information on industry plans for harvesting and processing U.S.-caught groundfish will be considered by the Secretary when making the final determination, after consultation with the Council, of the 1984 TACs and initial DAP, JVP, and TALFF specifications for each target species and the "other species" category in the Bering Sea and Aleutian Islands area. The final specifications of initial TAC, DAP, JVP, and TALFF amounts under Amendment 1 will be set forth in a rule-related notice published in the **Federal Register** once the final rule implementing the amendment is effective.

Other Matters

Any rule-related notice setting initial 1984 TAC, DAP, JVP and TALFF amounts as described above would be required by proposed 50 CFR 675.20(a) (48 FR 41795, September 19, 1983), and would comply with E.O. 12291.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*).

Dated: October 27, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-29746 Filed 11-1-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 213
Wednesday, November 2, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States, to be held at 9:30 a.m., Tuesday, November 22, 1983, at 400 Maryland Avenue, SW., Room 7002, Washington, D.C.

The Committee will meet primarily to discuss pending and possible projects on its agenda, including Professor George D. Brown's draft report on procedures for administering federal block grant programs.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information contact Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. (Telephone: 202–254–7065) Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
October 28, 1983.
[FR Doc. 83-29755 Filed 11-1-83; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

October 28, 1983.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following infofmation:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

● Animal and Plant Inspection Service
Witchweed Mail Survey
Annually
Farms: 3,250 responses; 1,625 hours; not applicable under 3504(h)
B. Adams (301) 436–7776

● Agricultural Marketing Service
Celery Grown in Florida—Marketing Order 967
On Occasion, Annually
Farms, Businesses: 1,178 responses; 61 hours; not applicable under 3504(h)
Anne M. Dec (202) 475–3930

Revised

● Animal and Plant Health Inspection Service
Epidemiologic Investigation of Brucellosis Reactor Herd
VS 4–108, 4–108A, 4–108B, 4–108C
Occasion
Farms: 11,747 responses; 9,867 hours; not applicable under 3504(h)
W.C. Ray (301) 436–8713

Reinstatement

● Rural Electrification Administration
Estimated Schedule of Advances on FFB Notes Guaranteed by REA
REA—152
Annually
Small Businesses: 100 responses; 25 hours; not applicable under 3504(h)
Charles Weaver (202) 382–1900

Dewayne Hamilton,
Acting Department Clearance Officer.
[FR Doc. 83-29715 Filed 11-1-83; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Research Service

Soybean Research Advisory Institute; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Agricultural Research Service announces the following meeting:

Name: Soybean Research Advisory Institute.

Date: December 8–9, 1983 (9:00 a.m. daily).

Place: Room 3109, South Building, U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, DC 20250.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: This is the fourth meeting of the Soybean Research Advisory Institute. The purpose of this Advisory Institute is to provide a temporary advisory body to assess soybean production and utilization research in the United States and to submit a comprehensive report to Congressional committees on its findings. The fourth meeting includes work sessions on the report.

and planning for the publication of the final report.

Contact person: Dr. Robert C. Leffel, Executive Secretary, Soybean Research Advisory Institute, Bldg. 011, HH–19, BARC-West, Beltsville, MD 20705. Telephone: (301) 344–1722.

Done at Beltsville, Maryland, this 24th day of October 1983.

Robert C. Leffel,

Executive Secretary, Soybean Research Advisory Institute.

[FR Doc. 83-29781 Filed 11-1-83; 8:45 am]

BILLING CODE 3410-03-M

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1984 Rice Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1984 crop of rice: (a) The loan and purchase rate; (b) the established (target) price; (c) the national program acreage (NPA); (d) whether a voluntary reduction percentage should be proclaimed and, if so, the level of such percentage reduction; (e) whether an acreage reduction program (ARP) should be established and, if so, the percentage of such reduction and the method to be used in establishing the acreage bases; (f) whether a payment-in-kind (PIK) program should be established and, if so, the percentage of acreage reduction under the program and the level of payment; (g) whether to permit haying and grazing of conservation use acreage if an acreage reduction or payment-in-kind program is established; (h) whether a land diversion program should be established and, if so, the extent of such diversion and the level of payment; (i) whether to require offsetting compliance if an acreage reduction program is established; and (j) other provisions. The determinations are required to be made in accordance with provisions of the Agricultural Act of 1949, as amended, (hereinafter referred to as the "Act").

DATE: Comments must be received on or before December 2, 1983, to be assured consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: George H. Schaefer, Supervisory Agricultural Marketing Specialist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, or call (202) 447–4634. A Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major." It has been determined that these program provisions will affect the supply and price of rice during the 1984/85 marketing year, which will in turn impact upon producers, processors, exporters and consumers of rice.

The titles and numbers of the federal assistance programs to which this notice applies are: Title—Rice Production Stabilization, Number 10.065, and Title—Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

It is necessary that the determinations for the 1984 crop be made in sufficient time to permit rice producers to make adequate plans for production of their crop. Therefore, it has been determined that the period for submitting comments with respect to this notice is being limited to 30 days in order to allow the Secretary sufficient time to properly consider the comments received before determining the final program provisions.

The following proposed program determinations are to be made with respect to the 1984 crop of rice:

Proposed Determinations

1. *The Loan and Purchase Rate.* Section 101(i)(1) of the Act provides that the Secretary of Agriculture shall make available to producers in the several States of the United States loans and purchases for the 1984 crop of rice at such level as bears the same ratio to the loan level for the 1983 crop as the established price for the 1984 crop of rice bears to the established price for the 1983 crop. The loan and purchase rate for the 1984 crop of rice shall be established on the basis of the 1983 loan rate prior to any adjustments. If the Secretary determines that loans and purchases at the foregoing level would substantially discourage the exportation of rice and result in excessive stocks of rice in the United States, the Secretary may establish loans and purchases at such level, not less than $8.00 per hundredweight, as the Secretary determines necessary to avoid such consequences.

Section 403 of the Act provides that appropriate adjustments may be made in the support price for differences in grade, type, and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average support price for such commodity will, on the basis of the anticipated incidence of such factors, be equal to the level of support.

The loan and purchase rate grade and grade-factor discounts are based on Federal Grain Inspection Service (FGIS) standards which permit moisture of fifteen percent for rice grades one through six. Rice having moisture in excess of thirteen percent is generally unmarketable for milling use because it may cause heat damage and thereby reduce the quality of rice with which it is stored on a commingled basis. The Commodity Credit Corporation (CCC) has experienced losses in inventory value due to the receipt and storage of high-moisture and sample grade rice. The Agricultural Stabilization and Conservation Service (ASCS) is, therefore, considering establishing loan and purchase rate discounts in the range of $3.00 to $4.00 per hundredweight for sample grade rice and rice of any grade with moisture exceeding thirteen percent in order to discourage the delivery of such rice to CCC.

ASCS currently establishes the loan value of farm-stored rice at the national average loan rate regardless of actual type, quality, or milling outturn. ASCS is considering revising this procedure for farm-stored rice loans by calculating the initial loan value based on the type and State average quality and milling outturn of the rice placed under loan. In the event such farm loan collateral is forfeited to CCC, final settlement would be made, as is the current practice, based upon actual appraisal grade and milling outturn. Loans which are made on warehouse-stored rice are currently based on the type and appraised grade and milling outturn of the actual rice collateral. Accordingly, no procedural change in determining loan values is being considered for such loans.

ASCS is considering establishing the following quality and milling outturn

levels as the basis for determining farm-stored loan values:

State	Grade/ milling outturn
Arkansas, Oklahoma, Tennessee:	
Long grain	#2; 53/66
Medium/short grain	#2; 56/67
California:	
Long grain	#1; 45/67
Medium/short grain	#1; 53/68
Florida:	
Long grain	#2; 56/70
Medium grain	#2; 54/68
Louisiana:	
Long grain	#2; 52/65
Medium/short grain	#2; 54/67
Mississippi:	
Long grain	#2; 53/65
Missouri:	
Long grain	#2; 53/66
Medium/short grain	#2; 56/67
Texas:	
Long grain	#1; 57/68
Medium grain	#2; 58/68

The following loan and purchase levels are currently being considered for the 1984 crop of rice: (a) $8.93 per hundredweight, the rate calculated in accordance with the statutory formula; (b) $8.14 per hundredweight, the 1983 crop loan and purchase rate; and (c) $8.00 per hundredweight, the statutory minimum loan rate. Export utilization for Marketing Year (MY) 1984/85 is forecast to decline from the MY 1983/84 level should the 1984-crop loan and purchase rate be established by the statutory formula.

Comments along with supporting data, are requested as to: (a) The national average loan and purchase rate for the 1984 crop of rice; (b) the loan and purchase rate value factors for types of rice; (c) the level of grade discounts appropriate for the 1984 crop of rice; (d) whether USDA should establish loan and purchase rate discounts in the range of $3.00 to $4.00 per hundredweight for sample grade rice and higher grade rice having moisture in excess of 13.0 percent; and (e) whether USDA should base initial farm-stored loans on average State quality and milling outturn by type, and if so, appropriate State grades and milling outturns.

2. *The established (Target) Price.* Section 101(i)(2)(C) of the Act provides that the established price for rice shall be not less than $11.90 per hundredweight for the 1984 crop. Such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in: (a) The average adjusted cost of production per acre for the two crop years (1982 and 1983) immediately preceding the year for which the determination is made from (b) the average adjusted cost of production per acre for the two crop years (1981 and 1982) immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop. The Secretary has proposed legislation which would permit the target price level for the 1984 and 1985 crops to be established at not less than $11.40 per hundredweight, the 1983-crop target price level.

Comments are requested on the level of the established (target) price for the 1984 crop of rice.

3. *National Program Acreage (NPA).* Section 101(i)(4)(A) of the Act provides that the Secretary shall proclaim an NPA for the 1984 crop of rice not later than January 31 of each calendar year for the crop harvested in that calendar year. The NPA for rice shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm established yield for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1984/85 marketing year. If the Secretary determines that carryover stocks of rice are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA first proclaimed if the Secretary determines it is necessary based upon the latest information. If an acreage reduction program is implemented for the 1984 crop of rice, the NPA shall not be applicable to such crop. If required, the likely NPA for the 1984 crop of rice would be:

a. Estimated Domestic Use, 1984/85 (mil. cwt)	63.5
b. Plus Estimated Exports, 1984/85 (mil. cwt)	72.0
c. Minus Imports (mil. cwt)	.5
d. Minus Stock Adjustment (mil. cwt)	5.0
e. Divided by National Weighted Average Farm Program Payment Yield (cwt. acre)	46.90
f. Equals 1984 crop NPA (mil. acres)	2.77

Comments on the NPA and the appropriate carryover stock level for the 1984 crop of rice, along with supporting data, are requested.

4. *Whether a Voluntary Reduction Percentage Should Be Proclaimed and, if so, the Level of Such Voluntary Reduction Percentage.* Section 101(i)(4)(C) provides that the 1984 individual farm program acreage of rice eligible for payments shall not be reduced by application of an allocation factor (not less that 80 percent nor more than 100 percent) if the producer voluntarily reduces the acreage of rice planted for harvest on the farm from the 1984-crop established rice acreage base by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1984 crop.

If an acreage reduction program is implemented for the 1984 crop of rice, the voluntary reduction percentage shall not be applicable to such crop. If required, the likely national recommended voluntary reduction percentage for the 1984 crop of rice would be:

a. 1984 Established Rice Acreage Base (mil. acres)	4.013
b. Minus 1984 Preliminary NPA (mil. acres)	2.770
c. Equals Acreage Reduction Needed from Acreage Base (mil. acres)	1.243
d. Divided by 1984 Rice Acreage Base (mil. acres)	4.013
e. Equals 1984-Crop Recommended Reduction Percentage (percent)	30.974

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

5. *Whether an Acreage Reduction Program (ARP) Should Be Established and, if so, What Percentage.* Section 101(i)(5)(A) of the Act provides that the Secretary may establish a limitation on the acreage planted to rice if the Secretary determines that the total supply of rice, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each rice-producing farm. Producers who knowingly produce rice in excess of the permitted rice acreage for the farm shall be ineligible for rice loans, purchases and payments with respect to that farm. If an acreage reduction program is in effect for any crop, the national program acreage, voluntary reduction percentage, program allocation factor, and the application of the program allocation factor to the individual farm program acreage are not applicable to such crop.

Section 101(i)(5)(A) of the Act further provides that the acreage base for any farm for the purpose of determining any reduction required to be made for any year shall be the acreage planted on the farm to rice for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the

average acreage planted to rice for harvest in the two crop years immediately preceding the year for which the determination is made. Acreage planted to rice for harvest shall include any acreage which the producers were prevented from planting to rice or other nonconserving crop in lieu of rice because of drought, flood, or other natural disaster, or other condition beyond the control of the producers.

The Secretary may permit all or any part of the reduced acreage to be devoted to sweet surghum, hay and grazing or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

Section 101(i)(5)(A) of the Act authorizes the Secretary to make adjustments in the acreage base established for any farm to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. For the 1983-crop rice program, the Secretary permitted the adjustment of rice acreage bases, on a case by case basis, for the purpose of controlling red rice. However, it has become evident that in a number of situations these adjustments were being requested for the purpose of moving the production history from farm to farm for the convenience of leasing arrangements rather than to control the infestation of red rice. There has been a sharp increase in landlord-tenant disputes which can be shown to be a direct result of allowing adjustments in the farm acreage base for these red rice problems. Accordingly, ASCS is considering not permitting any adjustments of the farm acreage bases for the control of red rice with respect to the 1984-crop rice program. Comments are requested on the adjustment of bases for the purpose of controlling red rice.

The need for a production adjustment program for the 1984 crop of rice will be based on estimates of stock levels and domestic and export utilization for MY 1983/84 and MY 1984/85. Beginning stocks for MY 1983/84 have been estimated at 66.6 million hundredweight. The 1983 crop planted and harvested acreages have been estimated at 2.335 and 2.110 million acres respectively. Based on an estimated harvested yield or 4,627 pounds per acre, production is estimated at 103.9 million hundredweight resulting in a total supply, including imports, of 171.1 million hundredweight.

Domestic rice use for MY 1983/84 is forecast to be approximately 62.0 million hundredweight, about fifteen percent above domestic use in MY 1982/83. Export utilization is forecast at 69.0 million hundredweight, essentially the same as in MY 1982/83. U.S. exports are not expected to increase because U.S rice is generally expected to be priced above comparable rice from competing origins. Based on these estimates, ending stocks of rice for MY 1983/84 will be about 30.1 million hundredweight, a 55 percent decline from the record-level ending stocks of the prior year.

Without some production adjustment program for the 1984 crop of rice, it is estimated that planted rice acreage would increase to about 3.9 million acres, about the level of acreage which was planted in MY 1981/82. Such an increase could be expected because of the profitability of rice compared with competing crops. With plantings at this level, harvested yields are forecast at 4,600 pounds per acre, resulting in producting of about 176.0 million hundredweight. This level of production, combined with beginning stocks and imports, results in a total supply for MY 1984/85 of about 206.4 million hundredweight.

Total utilization of rice for MY 1984/85 is forecast at about 145.5 million hundredweight. Domestic use is forecast to increase about 2 percent to 63.5 million hundredweight while export use is forecast at 70.5 million hundredweight. These levels of utilization will result in ending stocks of about 62.4 million hundredweight—about 43.3 percent of total utilization for the year and nearly equal to the record level ending stocks of MY 1982/83. Stocks at such a level tend to depress farm level prices and contribute to high program costs. This assessment could change if 1983/84 or 1984/85 marketings, world trade, or world price levels change from estimated levels.

The acreage reduction options under consideration at this time are: (a) A 15 percent acreage reduction program; (b) a 15 percent acreage reduction program combined with a 15 percent land diversion program; (c) a 30 percent acreage reduction program; and (d) a 20 percent acreage reduction program combined with a 10 percent payment-in-kind program.

Comments and supporting data are requested on: (a) The appropriate level of an acreage reduction program for the 1984 crop of rice; (b) the appropriate level of ending stocks, expressed as a percentage of total utilization, which is not considered excessive; (c) the adjustment of bases for the purpose of controlling red rice; (d) the procedure for establishing the 1984 rice acreage base for any farm; and, (e) the type of crop(s) which should be allowed to be planted on the reduced acreage.

In addition, comments are requested as to whether producers who desire to participate in the rice program should be required to execute binding contracts at the time of enrollment in the program. Presently, a producer desiring to participate in the program signs an intention to participate and later provides a certification with respect to the applicable acreage in order to receive program benefits. If a producer is required to execute a binding contract to participate in the program at the time of program enrollment it should aid in deterring the producer from failing to comply with the terms and conditions of the program at a later time.

6. *Whether a Payment-In-Kind (PIK) Program Should be Established and, if so, What Percentage.* Section 101(i)(5)(B) of the Act authorizes the Secretary to make land diversion payments to producers of rice if the Secretary determines that the payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*) gives the Corporation broad authority to support the price of agricultural commoditites, stabilize agricultural commodity markets, and remove and dispose of agricultural surpluses.

The Department is considering implementing a Payment-In-Kind program for the 1984 crop of rice which would be similar to the one established for the 1983 crop. Any such program would be in addition to a 20 percent ARP. The percentage of the farm's established yield which would be made available to the producer as payment-in-kind under such a program would range from 50 percent to 80 percent.

With respect to a 1984 Payment-In-Kind Program for rice, a producer would enter into a contract with the Commodity Credit Corporation to divert not less that 5 percent nor more than 10 percent of the rice acreage based established for the farm. With respect to such contracts, the quantity of rice which the producer would be eligible to receive as payment-in-kind would be equal to the acreage which was diverted multiplied by the established yield multiplied by the payment percentage. If

a producer elects to participate in the Payment-In-kind Program for rice and if such producer has an outstanding quantity of rice pledged as collateral for a price support loan, the producer would be required to redeem a quantity of such loan collateral equal to that quantity of rice which the producer is entitled to receive as payment in kind. The producer would be required to sell that quantity of rice which has been redeemed to CCC and such quantity would then be made available to such producer as payment in kind. To the extent that a producer has no 1983 crop price support loan collateral which could be made available to CCC for payment-in-kind purposes, the producer would be required to pledge a quantity of his 1984 rice production as loan collateral and then redeem and sell it to CCC for use as payment in kind. Interested parties are intived to comment on the need for a Payment-in-Kind Program in 1984, as well as the various program provisions. Comments should include supporting data.

7. *Whether to Allow Haying and Grazing of Conservation Use Acreage.* Section 101(i)(5)(A) of the Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion. Interested persons are invited to comment on the grazing and haying of conservation use acreage and the conservation measures applied to land removed from production under any 1984 crop acreage reduction program.

8. *Whether a Land Diversion Program Should Be Established, and, if so, the Extent of Such Diversion and the Level of Payments.* Section 101(i)(5)(B) of the Act provides that the Secretary may make cash land diversion payments to producers of rice, whether or not an acreage limitation for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community. The land diversion option under consideration at this time is a 15 percent land diversion program combined with a 15 percent acreage reduction program.

Interested persons are encouraged to comment regarding: (a) The appropriate level of a land diversion program for the 1984 crop of rice; and (b) the appropriate land diversion program payment rate.

9. *Whether to Require Offsetting Compliance.* Section 101(i)(9) of the Act provides that the Secretary may issue such regulations as the Secretary determines necessary to carry out the rice program. If offsetting compliance is required by the Secretary, owners and operators of farms would have to assure that all of the farms in which they have an interest are in compliance with program requirements which are specified with respect to the rice program (e.g., planting within the rice acreage bases established for the farms), in order to be eligible for program benefits. Offsetting compliance was not in effect for the 1983 crop of rice.

Interested persons are encouraged to comment on the need for the Secretary to require offsetting compliance for the 1984 crop of rice.

10. *Other Related Provisions.* A number of other determinations must be made in carrying out the rice loan and purchase programs such as: (a) Commodity eligibility; (b) storage requirements; and (c) such other provisions as may be necessary to carry out programs.

CCC currently stores its rice inventory in private warehouses which are subject to a Uniform Rice Storage Agreement. The rice is stored either in a commingled or identity-preserved (IP) manner. Under true IP storage, individual lots of a particular type, grade and quality of rice are binned and stored separately. However, current IP storage practices for CCC rice are such that the identity of an individual lot of rice is not adequately preserved. Commingled storage has been the most prevalent method of storage for CCC over the years and most closely represents commercial storage practices. ASCS is, therefore, considering adopting the policy of storing all rice inventory on a commingled basis.

Interested parties are encouraged to comment on the need to continue the identity preserved storage of CCC rice inventory and whether this policy change would affect: (a) The availability of rice storage; (b) the cost of rice storage to CCC; and, (c) other considerations which relate to CCC use of IP or commingled storage.

Comments are also requested on any other program provisions, including commodity eligibility, as may be necessary to carry out any programs. Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Signed at Washington, D.C., October 28, 1983.

C. Hoke Leggett,

Acting Administrator.

[FR Doc. 83-29739 Filed 11-1-83; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-037]

Cotton Yarn From Brazil; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton yarn from Brazil. The review covers the period January 1, 1982 through December 31, 1982.

As a result of the review, the Department has preliminarily determined the aggregate net subsidey for the period to be 7.40 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Brian Kelley, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1983, the Department of Commerce ("the Department") published in the **Fedral Register** (48 FR 34999) the final results of its last administrative review of the

countervailing duty order on cotton yarn from Brazil (42 FR 14089, March 15, 1977) and announced its intent to conduct the next review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Brazilian cotton yarn. Such merchandise is currently classifiable under items 300.6000 through 302.9800 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982 through December 31, 1982, and five programs that we previously found countervailable: (1) Preferential financing for exports, (2) income tax exemptions for export earnings, (3) the export credit premium for the Industrial Products Tax ("IPI"), (4) fiscal benefits for special export programs, and (5) preferential export financing under CIC–CREGE 14–11.

The review also covers twelve additional programs that the petitioner alleged confer subsidies on exports of Brazilian cotton yarn.

Analysis of Programs

(1) Preferential Financing for Exports

Under this program the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX") declares companies eligible to receive working capital loans at preferential rates. These loans have a duration of up to one year. During the period of review, each firm producing cotton yarn could obtain preferential financing for up to 40 percent of its previous year's exports.

We calculated the subsidy under this program by multiplying the principal outstanding under the program during 1982 by the differenctial between the commercial interest rate and the preferential interest rate for each loan. For loans granted prior to the period, we included only that portion extending past January 1, 1982 in our calculation. We similarly prorated loans extending past December 31, 1982.

The commercial rate for short-term working capital is the rate established by the Banco do Brasil for discounting sales of accounts receivable. We chose this as the benchmark rate because the Government of Brazil provided information indicating that working capital is normally raised within the Brazilian financial system through the sale of accounts receivable. The commercial rate includes the tax on financial transactions ("the IOF"), from which loans under the preferential financing program are exempt; the rate was 66.50 percent during 1982.

During 1982, firms exporting cotton yarn had loans outstanding under Resolution 674 (effective January 22, 1981) of the Banco Central do Brasil. The effective annual rate for loans granted under this resolution was 44 percent and the differential between the commercial and preferential rates therefore was 22.50 percent. We calculated the benefit conferred by the program for 1982 to be 5.91 percent *ad valorem*.

On February 21, 1983, the Government of Brazil reduced the maximum eligibility for preferential financing under Resolution 674 from 40 percent of the previous year's exports to 30 percent. Effective January 3, 1983, the Banco do Brasil increased its discount rate to 72 percent. In addition, the Government of Brazil increased the effective preferential interest rate for export financing from 44 percent to 69 percent and lowered the IOF from 4.50 percent to 1.50 percent on June 10, 1983 (Resolutions 832 and 830, respectively).

Adding the 1.50 percent IOF to the 72 percent rate for discounting accounts receivable, the adjusted benchmark commercial interest rate is 73.50 percent. As a result, the differential between the commercial benchmark rate and the preferential interest rate is 4.50 percent.

To estimate the potential benefit and cash deposit of estimated countervailing duties for this program, we summed the prorated value of loans outstanding during 1982, and found a weighted average used rated of 27.41 percent. This rate is lower than the reduced annual amount manufacturers can borrow. We then multiplied the current 4.50 percent interest rate differential by the weighted average loan use rate to find a potential benefit under this program of 1.23 percent *ad valorem*.

(2) Income Tax Exemptions for Export Earnings

Exporters of cotton yarn are eligible under this program for exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount of tax-exempt profit and the prevailing 35 percent corporate income tax rate. We preliminarily determine the benefit from this program to be 0.17 percent *ad valorem* for 1982.

(3) IPI Export Credit Premium

Exporters of cotton yarn are eligible for the maximum IPI export credit premium. A percentage of the f.o.b. invoice price of the exported merchandise is reimbursed in cash to exporters through the bank involved in the export transaction. During the period of review the Brazilian government made three reductions in the maximum level of the IPI credit premium. The first, on March 31, 1982, reduced the level from 15 percent to 14 percent; the second, on June 30, to 12.50 percent; and the most recent, on September 30, to 11 percent.

Since June 26, 1981, the Brazilian government has been collecting an export tax on exports of cotton yarn to the U.S. (Resolution 699), completely offsetting the benefit received under this program. Therefore, we preliminarily determine that no net subsidy was attributable to this program during the period of review. Currently, the tax collected on exports of cotton yarn to the U.S. continues to fully offset the benefit received under this program. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential subsidy under this program is zero percent.

(4) Fiscal Benefits for Special Export Programs

Under Decree Law 1219 of May 15, 1972, any firm that produces manufactured products is eligible to receive benefits from the Commission for the Granting of Fiscal Benefits for Special Export Programs ("BEFIEX"), as long as the company makes an appropriate export commitment. Under Decree No. 77,065, a company can receive a reduction of 70 percent to 90 percent of the import duties and IPI tax on the import of machinery and equipment necessary to meet the approved export commitment. Cotton yarn exporters are eligible for benefits under this program, and one of the exporters for which we have data received benefits during 1982. We divided the amount of the benefits received by the total 1982 exports covered by the response, and found an *ad valorem* benefit under this program of 1.26 percent during 1982.

(5) Preferential Export Financing Under CIC–CREGE 14–11

CIC–CREGE 14–11 is a program operated by the Banco do Brasil that provides preferential financing to exporters, who are then required to maintain a minimum fixed level of foreign exchange contracts with the Banco do Brasil. Exporters of cotton yarn participated in this program in 1982.

To calculate the amount of benefit conferred under the program, we multiplied the prorated principal

outstanding during 1982 of each loan by the differential between the commercial and preferential interest rates on each loan. Using the preferential rate for each loan (provided by the Brazilian government) and again using the rate for discounting accounts receivable as the commercial rate, we found that the differential between the commercial and preferential rates was 11.50 percent. We preliminarily determine the benefit conferred by the program to be 0.06 percent *ad valorem*.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of cotton yarn did not use them during 1982.

A. Tax Reduction on Equipment Used in Export Production ("CIEX")
B. Fundo de Democratizacao do Capital das Empresas
C. Gold Draft of Exportation
D. Preferential Export Financing under Resolution 68 of the National Council for Foreign Commerce ("FINEX")
E. Preferential Financing for the Storage of Merchandise Destined for Export (Resolution 330)
F. Incentives for Trading Companies (Resolution 643)
G. Partially-Indexed Long-Term Loans
H. Accelerated Depreciation for Capital Goods Manufactured in Brazil
I. Fundo National de Participadoes ("FUNPAR")
J. Export Promotion Financing ("PROEX")
K. Import Substitution ("PROISM")
L. Green-Yellow Drawback

Preliminary Results of the Review

As a result of the review, we preliminarily determine the aggregate net subsidy to be 7.40 percent *ad valorem* for the period January 1, 1982 through December 31, 1982.

On August 3, 1981, the International Trade Commission ("the ITC") notified the Department that the Brazilian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or threat of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981 and through the date of the ITC's notification to the Department of its determination.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 2.72 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: October 26, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-29711 Filed 11-1-83; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on this application must be submitted on or before November 17, 1983.

ADDRESS: Interested parties should submit thier written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 83-00027."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificate of Review. A certificate of review protects its holder from civil and criminal liability under Federal and state antitruts laws for the export trade, export trade activities and methods of operation specified in the certificate. A certificate of review is to be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

Applicant: SOR, Inc.
Application: #83-00027
Dated Received: October 14, 1983
Date Deemed Submitted: October 20, 1983
Members in Addition to Applicant: Controls International, Ltd., SOR Export, Inc., Roy R. Dunlap and Ross E. Johnson

Summary of Application: SOR, Inc., incorporated in the State of Kansas and located at 11705 Blackbob Road, Olathe, Kansas 66061, submitted an application seeking certification for the following export trade activities and methods of operation for its export trade worldwide.

A. Export Trade

The Applicant and its members intend to export process control instruments, including but not limited to pressure, vacuum, differential pressure and temperature switches, and hand calibration pumps, and intend to provide all services related to the sales and maintenance of its products, including marketing of products and providing technical assistance to end-users or representatives.

B. Activities/Methods of Operation

The applicant and its members seek to enter into exclusive and non-exclusive representation agreements with suppliers, including suppliers within the same industry. The Applicant and its members propose to enter into, and from time to time terminate, exclusive and non-exclusive agreements with distributors, sales representatives, and customers located in foreign countries and in the United States for goods and services being exported or in the course of being exported. The foregoing agreements might contain territorial, customer, price and/or quantity restrictions.

In addition, the Applicant and its members seek to have certified the "packaging" of quotations responsive to invitations to bid, including the supply of products or services in the same industry, and seek certification for the designation and coordination of the sharing of business among the suppliers of the Applicant and its members. In addition, with respect to goods or services in the course of being exported, the Applicant and its members propose to consult and exchange information with competitors, to ascertain the existence of, prepare bids for, and share business from foreign customers.

The Applicant and its members intend to market it products and services worldwide, including but not limited to the Mid-East, Africa, Far East, Latin America, and Europe.

The Office of Export Trading Company Affairs is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register**. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued. Information submitted by any person in connection with this application will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Dated: October 19, 1983.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 83-29756 Filed 11-1-83; 8:45 am]

BILLING CODE 3510-25-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 80-4]

Order To Rescind CRT Order of October 12, 1983 Directing Additional Partial Distribution of the 1979 Cable Royalty Fund

The Copyright Royalty Tribunal (Tribunal) published on October 12, 1983 (48 FR 46411) an order directing additional partial distribution of the 1979 cable royalty fund. Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in the Appeals of the Tribunal's 1979 cable determination. The Tribunal's order provides for the retention of 20% of the fund "to accommodate the practical consequences of any adjustment resulting from judicial review." The decision of the Court of Appeals rejected a number of challenges to the Tribunal's determination and may thus justify a larger partial distribution than is provided in the Tribunal's order of October 12, 1983. The Tribunal has therefore resolved to set aside its order, and to consider at an early date the issuance of a new order for partial distribution.

The National Association of Broadcasters (NAB) filed on October 18, 1983 in the Court of Appeals an Emergency Motion for Summary Reversal of the Tribunal's Order. The basis for this motion is NAB's computation of all of the claims at issue in the proceeding before the Court. The Tribunal rejects the premise of the NAB position that the total claims of all parties determines what royalty fees are in controversy for partial distribution purposes.

The order of October 12, 1983 is rescinded.

Dated: October 27, 1983.

Commissioner Edward W. Ray,

Chairman.

[FR Doc. 83-29737 Filed 11-1-83; 8:45 am]

BILLING CODE 1410-09-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Level for Certain Cotton Textile Products from Pakistan

October 28, 1983.

Granting an increase for swing and carryforward from 513,361 dozen pairs to 581,401 dozen pairs for cotton gloves and mittens in Category 331, 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). The amount of carryforward used will be deducted from the 1984 level for Category 331. Pursuant to the terms of the bilateral agreement, and at the request of the Government of Pakistan, the import restraint limit established for Category 331 is being increased to 581,401 dozen pairs for goods exported during the twelve-month period which began on January 1, 1983.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (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 331, produced or manufactured in Pakistan and exported to the United States during the twelve-month period which began on January 1, 1983. In accordance with the terms of the bilateral agreement and at the request of the Government of Pakistan, the Chairman of the Committee for the Implementation of Textile Agreements is directing the

Commissioner of Customs to increase the limit for Category 331 to 581,401 dozen pairs.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 28, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 14, 1982, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, beginning on January 1, 1983 of cotton textile products in certain specified categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1983 and extending through December 31, 1983, 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 October 28, 1983, the twelve-month level of restraint established for cotton textile products in Category 331 to 581,401 dozen pairs.[2]

The action taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 533. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-29743 Filed 11-1-83; 8:45 am]

BILLING CODE 3510-DR-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 exported after December 31, 1982

Adjusting the Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Apparel Products From Taiwan

October 28, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, to be effective on October 28, 1983. For further information contact William Boyd, International Trade Specialist (202/3377–4212).

Background

A CITA directive dated December 16, 1982 (47 FR 57083) established import restraint limits for specific categories of cotton, wool, and man-made fiber textile products, including Categories 340, 341, 435, and 353/354/653/654, produced or manufactured in Taiwan which have been exported during the twelve-month period which began on January 1, 1983. At the request of the authorities in Taiwan, swing is being applied, increasing the limits for Categories 340 (men's and boy's woven cotton shirts), 341 (women's girls' and infants' woven cotton blouses), and 435 (womens' girls', and infants' wool coats). To account for the increases, the limit for cotton and man-made fiber down and feather-filled coats, jackets and vests in Category 353/354/653/654 is being reduced by a corresponding amount in equivalent square yards from 153,674 dozen to 126,853 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation on Textile Agreements.

October 28, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 16, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1983.

Effective on October 28, 1983, the directive of December 16, 1982 is hereby further amended to adjust the previously established limits for Categories 340, 341, 435, and 353/354/653/654, as provided under the terms of the bilateral agreement of November 18, 1982: [1]

Category	Adjusted 12-month level of restraint [1] (dozen)
340	630,919
341	392,036
435	20,793
353/354/653/654	126,853

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1982.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the Foreign affairs exception to the rulemaking provisions fo 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-29744 Filed 11-1-83; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton, Wool, and Man-Made Fiber Apparel Products Exported From Thailand

October 28, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, to be effective on October 31, 1983. For further information contact Gordana Slijepcevic (202/377–4212).

Background

A CITA directive dated August 16, 1983 (48 FR 37684) established levels of restraint for specified categories of

[1] The bilateral agreement of November 18, 1982 concerning cotton, wool, and man-made fiber textile products from Taiwan provides, in part, that: (1) Specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits and sublimits may be increased for carryforward; (3) specical shift may be applied to certain categories, provided a corresponding amount in equivalent square yards is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

cotton, wool, and man-made fiber textile products, including Categories 313, 314, 315, 317, 320, 331, 334/335, 338/339, 340, 341, 347/348, 445/446, 604, 634/635, 638, 641, 645/646, and 647/648, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1983. At the request of the Government of Thailand flexibility provided under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of July 27, and August 8, 1983 is being applied in the form of carryover to the limits for Categories 315, 334/335, 338/339, 340, 341, 347/348, 445/446, 634/635, 638, 641, 645/646, and 647/648. Swing is being applied to the limits for Categories 313, 314, 315, 317, and 604 with an equal square yard equivalent amount being deducted from the level for Category 320. Carryforward is being applied to Categories 313, 314, 315, 317, and 331. Carryforward used in these latter categories in 1983 will be deducted from the 1984 category limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 28, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs;
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 16, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products produced or manufactured in Thailand, and exported during the twelve-month period which began on January 1, 1983.

Effective on October 31, 1983, you are directed to amend the levels of restraint established for Categories 313, 314, 315, 317, 320, 331, 334/335, 338/339, 340, 341, 347/348, 445/446, 604, 634/635, 638, 641, 645/646, and 647/648 in the directive of August 16, 1983 to the following amounts, according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, and August 8, 1983: [1]

Category	12-month adjusted limit [1]
313	13,456,000 square yards.
314	9,806,000 square yards.
315	20,087,813 square yards.
317	6,554,000 dozen.
320	5,583,100 square yards.
331	465,067 dozens pairs.
334/335	61,894 dozen.
338/339	624,942 dozen.
340	117,729 dozen.
341	128,640 dozen.
347/348	217,634 dozen.
445/446	16,448 dozen.
604	749,000 pounds of which not more than 434,959 pounds shall be in T.S.U.S.A. No. 310.5049.
634/635	445,426 dozen.
638	144,818 dozen.
641	192,360 dozen.
645/646	87,692 dozen.
647/648	496,672 dozen.

[1] The levels have not been adjusted to reflect any imports after December 31, 1982.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-29745 Filed 11-1-83; 8:45 am]

BILLING CODE 3510-25-M

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 proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for 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; (8) The point of contact from whom a copy of the information proposal may be obtained.

New Collection

Family Support Center Information.

Air Force Family Support Centers need to gather information from Air Force personnel and their families in order to determine center usage, to provide data to higher headquarters for Air Force wide planning and programming, to evaluate effectiveness of programs, and to ensure effective delivery of services to families.

Individuals or households: 156,150 annual responses; 15,615 annual hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Lt Col. Tewell, HQ/MPXHF, Room 5C232, Washington D.C. 20330, telephone (202) 697-4720.

October 27, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-29713 Filed 11-1-83; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Information on Applicant for U.S. Army Nurse Corps.

Information on applicants is needed to determine suitability and qualifications for appointment in the Army Nurse Corps.

Individual nursing applicants: 3500 responses, 292 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and

[1] The agreement provides, in part, that: (1) Under certain specified conditions any non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; during the first agreement year special swing is available between Categories 313, 314, 315, and 320; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

John V. Wenderoth, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

October 27, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-29712 Filed 11-1-83; 8:45 am]

BILLING CODE 3710-08-M

Defense Intelligence Agency

Privacy Act of 1974; Deletion and Amendment to Systems of Records Notices

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Notice of deletion and amendment to systems of records.

SUMMARY: The Defense Intelligence Agency proposes to amend a system notice for a system of records subject to the Privacy Act by combining it with the notice for another system. The notice for the other system is being deleted. The amended system is set forth in its entirety below.

DATES: This system notice shall be amended as proposed without further notice on December 2, 1983 unless comments are received that would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Helen E. Shuford, (RTS–1), Defense Intelligence Agency, Washington, D.C. 20301. Telephone: 202/695–0364.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the Federal Register at: FR Doc. 83–12048 (48 FR 25950), June 6, 1983.

This amendment does not require an altered system report in accordance with 5 U.S.C. 552a(o).

October 28, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

L DIA 0740

SYSTEM NAME:

Attache Special Project (ASP) and Companion Channel Information System.

Reason: This system has been incorporated into L DIA 0800 Operation Record System (48 FR 25961 (June 6, 1983)).

L DIA0800

SYSTEM NAME:

Operation Record Systems.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in foreign intelligence and/or training activities conducted by the Department of Defense, who are of interest, either because of the actual, apparent, or potential use.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include operational, biographic, policy, management, training, and administrative matters related to the foreign intelligence activities of the Department of Defense.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the authority contained in the National Security Act of 1947, as amended, the Secretary of Defense issued Department of Defense Directive 5105.2 which created the Defense Intelligence Agency as a separate agency of the Department of Defense and charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records.

PURPOSE(S):

To provide information for the conduct of foreign intelligence operations and to provide for staff management of foreign intelligence training conducted by the Department of Defense.

Provided to other DoD Components when needed for the conduct of foreign intelligence operations or in connection with foreign intelligence training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, USES, AND PURPOSE OF SUCH USES:

Information may be provided to other Federal agencies when it is required for the conduct of foreign intelligence operations or in connection with foreign intelligence training activities.

See blanket routine uses above.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files maintained on magnetic tapes and discs. Also stored on microfilm and aperture cards as well as paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Master files are retained indefinitely. Temporary records are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Director for Attaches and Training, Defense Intelligence Agency, Washington, D.C. 20201.

NOTIFICATION PROCEDURES:

To determine if this system of records contains information pertaining to you, submit a written request to: The Freedom of Information Office (RTS–1), Defense Intelligence Agency, Washington, D.C. 20301. Your request must include your full name, current address, telephone number and social security account number or date of birth. Requests submitted on behalf of other persons must include their written, notarized authorization.

RECORD ACCESS PROCEDURES:

All requests for copies of records must be in writing. You must include in your request: Your full name, current address, telephone number and social security account number or date of birth. You should also state whatever the cost involved is acceptable to you or acceptable up to a specified limit. Requests submitted on behalf of other persons must include their written, notarized authorization. Requests should be mailed to: RTS–1 (FOIA Office), Defense Intelligence Agency, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

An individual who disagrees with the Agency's initial determination may file a request for review. Requests are to be in writing and made within 30 days of the date of notification of the initial determination. The requester must provide a statement setting forth the reasons for disagreement with the initial determination and provide such additional material to support an appeal. Requests should be mailed to: RTS–1 (FOIA Office), Defense

Intelligence Agency, Washington, D.C. 20301.

RECORD SOURCE CATEGORIES:

Other Department of Defense Components, Federal agencies, foreign sources, overt publications and private citizens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of these systems may be exempt under Title 5 U.S.C. 552a(k)(5). For additional information see Agency rules contained in 32 CFR Part 292a (DIA Regulation 12-12).

[FR Doc. 83-29736 Filed 11-1-83; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Hearing

AGENCY: National Advisory Council on Bilingual Education, Ed.

ACTION: Notice of hearing.

SUMMARY: This notice sets forth the Schedule and proposed agenda of a forthcoming hearing of the National Advisory Council on Bilingual Education. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 16, 1983—Public Hearing—9:00 a.m.-5:00 p.m. Public Hearing will be held at the Coliseito on Franklin Delano Roosevelt Avenue, Hato Rey, Puerto.

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202-245-2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

November 16, 1983, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on Puerto Rico's Bilingual programs:

(1) Education Technology

(2) Research

(3) Higher Education and Efforts in Bilingual Education

(4) Special Education and Gifted Students

(5) Nation At Risk—Implications on Bilingual Education

Witness should notify Ramon Ruiz (see address above) of their intention of testifying.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis

(2) Witnesses shall limit their testimony to twenty minutes

(3) All testimony shall be tape recorded

(4) Exceptions to the aforementioned procedures shall be at the discretion of the Chairperson.

Records are kept of all Council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporters Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202 from the hours of 8:00 a.m.- 4:30 p.m.

Dated: October 28, 1983.

Jesse M. Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 83-29644 Filed 11-1-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES84-9-000]

Baltimore Gas & Electric Co.; Application

October 27, 1983.

Take notice that on October 21, 1983, Baltimore Gas and Electric Company (Applicant) filed an application seeking authority, pursuant to Section 204 of the Federal Power Act, to issue up to $400,000,000 principal amount of short-term debt to be issued from time to time with maturities not later than December 31, 1985.

Any person desiring to be heard or to make protest with reference to said application should on or before November 22, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29645 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-538-002]

Canyon Creek Compression Co.; Petition To Amend

October 27, 1983.

Take notice that on October 12, 1983, Canyon Creek Compression Company (Canyon Creek), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP82-538-002 a petition pursuant to Section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations, to amend the order issued January 20, 1983, in Docket Nos. CP82-538-000 and CP82-538-001 (22 FERC ¶62,809) all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order of January 20, 1983, granted Canyon Creek a certificate of public convenience and necessity for blanket authorization to transport natural gas on behalf of interstate pipeline companies. Canyon Creek is seeking retroactive amendment of ordering paragraph (F) of said order so that Canyon Creek may retain that portion of the revenues received from transactions performed under the blanket authorization which is attributable to the commodity rate component, in addition to the one-cent per million cubic feet of gas already allowed for other out-of-pocket expenses. It is stated that this commodity rate is the variable portion of the electric charge attributable to the customers for whom Canyon Creek is providing service under the blanket authorization. Canyon Creek states that retention of the commodity rate component, in addition to the one-cent allowance, is necessary in order that Canyon Creek may fully recover its costs in proving compression and transportation service under the blanket authorization.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 17, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29646 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-8-000]

Consumers Power Co.; Application

October 27, 1983.

Take notice that on October 20, 1983, Consumers Power Company (Applicant) filed an application, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue up to $600,000,000 of short-term debt to be issued from time to time between January 2, 1984 and December 31, 1984, with maturities of 364 days or less.

Any person desiring to be heard or to protest with reference to said application should on before November 21, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. Washington, D.C. 20426, petitions to intervene or protests in accordance with requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). The application is on file with Commission in with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29647 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP73-43-013 (PGA77-2) et al.]

Mid Lousiana Gas Co.; Filing

October 27, 1983.

Take notice that on October 17, 1982, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing pursuant to the Commission's "Order Modifying Initial Decision" issued in this proceeding August 2, 1983, the following:

Exhibit A—Computation of the Jurisdictional Portion of the Amounts paid to Grand Bay for the Compression of Liquefiable Hydrocarbons

Exhibit B—Computation of Carrying Charges to the Amounts paid to Grand Bay for the Compression of Liquefiable Hydrocarbons

Mid Louisiana states that Exhibit A reflects the detailed computations, calculated separately for the instant docket and all subsequent dockets which are subject to the outcome of this proceeding, utilized to calculate the jurisdictional portion of the amounts paid to Grand Bay attributable to the compression of, liquefiable hydrocarbons for the period January, 1977 through April 1983.

Exhibit B reflects the calculation of carrying charges, calculated separately for the instant docket and all subsequent dockets which are subject to the outcome of this proceeding, at the rate and method provided in § 154.67(d) of the Commission's Regulations, on the principal amounts reflected on Exhibit A.

Mid Louisiana has credited, as of April 30, 1983, to Account 191 the summation of Exhibits A and B ($67,166). Beginning with the month of May, 1983, Mid Louisiana will, on a monthly basis, calculate the amount of dollars paid to Grand Bay attributable to the compression of liquefiable hydrocarbons and credit the jurisdictional portion of these amounts to Account 191. Such amounts will be reflected in Mid Louisiana's subsequent PGA filings.

A Copy of this filing has been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29648 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-3-000]

Mountain Fuel Supply Co.; Application

October 27, 1983.

Take notice that on October 4, 1983, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP84-3-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the use of the two existing points of pipeline interconnection between Applicant and Colorado Interstate Gas Company (CIG) as delivery points to implement the sale of natural gas by Applicant's Distribution Division to Husky Oil Company (Husky) of Cheyenne, Wyoming, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to use two existing points of interconnection between its interstate transmission facilities and those of CIG as delivery points to implement the sale of approximately 11,000 Mcf of natural gas per day by its Distribution Division to Husky on a best-efforts, interruptible basis. Applicant states that Husky intends to use the gas purchased from Applicant's Distribution Division for various process, boiler and pilot fuel uses in the refining of crude oil at its Cheyenne, Wyoming, oil refinery.

It is stated that Applicant and Husky entered into a gas purchase agreement on September 1, 1983, that provides for the delivery of gas by Applicant at either of the proposed delivery points for an initial term of two years from the date of first delivery. Applicant states that Husky's payments under the agreement are based on minimums of 61,000 dt and 195,000 dt equivalent of natural gas per month during the months of January through March and April through December, respectively.

Applicant further explains that it is informed that Husky, in conjunction with this transaction, has entered into contractual arrangements with the local Cheyenne gas distribution utility, Cheyenne Light, Fuel & Power Company, and CIG to transport natural gas from Applicant's delivery points to Husky's Cheyenne refinery for the account of Husky.

It is stated that Applicant would charge Husky an intial base rate of $2.80 per dt with minor seasonal variations. Applicant further states that Husky would be required to pay $0.40 per dt equivalent for any deficiency in takes below 61,000 dt per month during January-March and below 195,000 dt per month during April-December but that this non-gas-cost minimum is subject to makeup over the term of the agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 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 Commision or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29649 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-21-000]

Steve Bowman, et al., Complainants v. Columbia Gas Transmission Corporation, et al., Respondents; Complaint

October 27, 1983.

Take notice that on October 14, 1983, the Office of the Consumers Counsel, 137 East State Street, Columbus, Ohio 43215, filed in Docket No. CP84-21-000 on behalf of Steve Bowman, *et al.*, Complainants,[1] a complaint pursuant to Section 385.206 of the Commission's Rules of Practice and Procedure (18 CFR Part 385.206) relative to the proposed abandonment of Pipeline D-75 by Columbia Gas Transmission Corporation, *et al.*, Respondents,[2] all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

The complaint states that Complainants are residential customers who receive natural gas and/or are owners of properties which receive natural gas service from Respondent Columbia Gas of Ohio, Inc. (Ohio). Through Pipeline D-75 (D-75) located near the Village of Harpster, Wyandot County, Ohio, and controlled by Respondent Columbia Gas Transmission Corporation (Columbia). The complaint further states that the Office of the Consumers' Counsel is an agency of the State of Ohio responsible for representing the interests of Ohio residential customers of investor-owned public utilities pursuant to Chapter 4911, Ohio Revised Code. In addition, the complaint states that Respondent Columbia is a natural gas company subject to the jurisdiction of this Commission under the Natural Gas Act.

The complaint alleges that Columbia and Ohio have indicated their intention to cease the delivery of natural gas through D-75 although neither Columbia nor Ohio has commenced the appropriate abandonment proceedings. The complaint asserts that D-75 was orignally employed as a transmission line by Ohio Fuel Gas Corporation and its successors in interest, Columbia and Ohio, and that D-75 has not been used for many years for any purpose other than to supply gas to Complainants. Complainants submit that the question of whether D-75 is now validly classified as a transmission line is one for this Commission to resolve and complainants assert that this pipeline is actually a distribution line not within the jurisdiction of this Commission.

The complaint states that Columbia and Ohio wish to abandon D-75 because of its deteriorated condition and that the direct cause of this deteriorated condition is Respondents' failure properly to maintain the pipelines. The complaint further states that Complainants have at all times pertinent hereto paid to Ohio its standards retail rates and alleges that such rates include sums paid for the maintenance and repair of Ohio's plant in service and from which, the complaint states, Complainants have never benefitted.

Complainants aver that Respondents have planned to abandon D-75 for an uncertain number of years and that Respondents have granted new service arrangements along this pipeline since deciding to abandon the pipeline. Complainants further allege that Respondents have, since deciding to abandon D-75, induced certain Complainants to invest in appliances which require a continuing supply of natural gas for their operation.

Stating that the issues in this controversy are complex and that jurisdiction over some of those issues may be with various judicial and regualtory entities, Complainants indicate that they have filed complaints in the Court of Common Pleas of Wyandot, County, Ohio, and before the Public Utilities Commission of Ohio, in addition to the complaint filed in Docket No. CP84-21-000.

Complainants request that this commission relinquish jurisdiction over D-75, asserting that the pipeline is not a transmission line and is not within this Commission's jurisdiction. In the alternative, Complainants request that this Commission, in the exercise of its jurisdiction over D-75, (1) order Respondents to cease any and all attempts to terminate service to any of Complainants pending resolution of this controversy, (2) initiate a hearing to determine the propriety of Respondents' actions with regard to said pipeline, (3) determine that due to Respondents' negligence and improper inducement of Complainants, Respondents should not be permitted to abandon said pipeline, (4) order Respondents to continue service to Complainants, and (5) order such other relief the Commission may deem just and reasonable.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before November 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

[1] Steve Bowman, R.J. Denman, Carl E. Lewis, Mrs. Arthur Mauer, Stanley Pack, Roy Pool, H.R. Schwilk, Randall Schwilk, Hubert Shaeffer, Regina Gabriel, Jane Hunt, Russell Manhart, Fred Smith, and Robert Hawk.

[2] Columbia Gas Transmission Corporation and Columbia Gas of Ohio, Inc.

intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29650 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF84-2011-000 and EF84-2021-000]

United States Department of Energy—Bonneville Power Administration; Order Granting Interim Approval of Rates in Part, Granting Interventions, Denying Motion for Partial Summary Disposition, and Extending Prior Confirmation of Transmission Rates

Issued: October 26, 1983.

On October 3, 1983, the Bonneville Power Administration (BPA or Bonneville) filed proposed wholesale power and transmission rate increases. BPA requests interim approval of these rates as of November 1, 1983, pursuant to section 7(i)(6) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act or Act), 16 U.S.C. 839e(i)(6), and the Commission's Rules for the Confirmation and Approval of the Rates of the Bonneville Power Administration, 18 CFR Part 300. In addition, BPA concurrently requests final confirmation and approval of these rates pursuant to section 7(a)(2) of the Regional Act, 16 U.S.C. 839e(a)(2), for the period November 1, 1983, through September 30, 1985.[1]

The proposed rates would provide for an increase in revenues of approximately $434 million over revenues which would have been collected under current rates for the twelve month period beginning July 1, 1984.[2] In order to implement the rates as of November 1, 1983, BPA requested waiver of the Commission's 90 day advance filing requirement.[3] According to BPA, if the rates do not become effective as of November 1, 1983, contractual limitations may prevent BPA from adjusting its rates to certain customers until several months after that date, to the detriment of the Federal Treasury.

Notice of the filing was published in the **Federal Register**, with comments due on or before October 20, 1983.

On or before October 20, 1983, eleven separate pleadings were filed by individual petitioners or groups of petitioners.[4] On October 21, 1983, a late-filed motion to intervene was filed by the California Energy Commission along with separate comments in opposition to BPA's request for interim rate approval. On October 24, 1983, late motions to intervene were filed by the Northwest Environmental Defense Center, the Public Generating Pool, the Association of Public Agency customers, and United States Representative James Weaver. Responsive comments were also filed by BPA and a group collectively referring to themselves as the Pacific Northwest Parties.

All petitioners have requested intervenor status in these proceedings. Of the sixteen sets of comments filed, most petitioners contend that Bonneville's rates do not comply with the statutory standards set forth in the Regional Act. As a result, some of the petitioners have requested that the Commission disapprove Bonneville's rate schedules.[5]

Three of the petitioners[6] contend that Bonneville's filing fails to comply with section 4(h)(10)(A) of the Regional Act which relates to the protection, mitigation, and enhancement of fish and wildlife in the Pacific Northwest. By failing to recover sufficient revenues through its rates to fund implementation of the Columbia River Basin Fish and Wildlife Program, as required by the Regional Act, the petitioners submit that Bonneville's rates are not based upon the Administrator's "total system costs," as required under section 7(a)(2)(B) of the Regional Act.

The petitioners from California (hereinafter California intervenors),[7] have requested the Commission to deny interim approval of various aspects of Bonneville's non-firm rates for service outside the region but within the United States. California intervenors claim that Bonneville has provided insufficient support to justify approval of the non-firm and surplus power rates. Intervenors contend that these rates, particularly the NF-83 rates are not based upon the cost of providing non-firm service, but intstead are developed with an eye toward maximizing revenues from these customers and, at the same time, minimizing competition from alternative sources of supply for non-firm power to California over the Pacific-Northwest/Southwest intertie. California intervenors therefore contend that the NF-83 rate is, on its face, discriminatory and anticompetitive. The petitioners further contend that the standards for implementation of the various components under the NF-83 rate schedule are unclearly defined, leaving Bonneville with broad discretion in determining when service under the various rates will be provided. The California Utilities specifically request that Rate Schedule NF-83 be summarily disapproved by the Commission and sent back to BPA for revision and resubmission. All of the California intervenors request that a hearing be ordered on all Bonneville's rates, including the rates governed by section 7(k) of the Regional Act.

In addition to the substantive comments noted above, the California Utilities and the California Energy Commission object to the short time period that has been provided for the filing of comments by the parties. These intervenors point to BPA's repeated failure to conform to the Commission's advance filing regulations. The intervenors fear that, as a result of the time contraint imposed by the shortened period for comments, Bonneville has rendered the interim review and approval process meaningless. The California Utilities request that a further opportunity for comment be provided prior to final confirmation and approval of BPA's rates.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR

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[1] BPA also has pending before the Commission a request for interim or final confirmation and approval of its rates for sale of power generated at the Handford Generating Project. On August 4, 1983, in Docket No. EF83-2031-000, BPA requested an extension of the approval which had been granted by the Economic Regulatory Administration when that entity had responsibility for BPA rates. That approval expired on June 30, 1983. We have not as yet acted on the request for extension. On October 17, 1983, BPA supplemented its October 3, 1983 rate filing by requesting interim or final confirmation and approval of its Handford rates. The Handford rates will be dealt with in a subsequent order. No action in this order should be construed as action on the Handford rate request.

[2] Bonneville has requested approval of wholesale power rates which would increase power revenues to approximately $2.9 billion in operating year (OY) 1985, an increase of 17 percent over projected revenues for the same period from current rates. The proposed transmission rates would increase revenues for these services to about $96 million, an increase of about 40 percent. The rate increase to BPA's wholesale power preference customer class averages about 23.6 percent for OY 1985. The industrial firm rate increase is approximately 9 percent and the new resources rate has increased by less than one percent.

[3] *See* 18 CFR § 300.10(a)(3). The 90 day requirement was reduced to 60 days when the Commission issued its final rule on BPA rate review. Order issued August 9, 1983, Docket No. RM82-6-000, 24 FERC ¶ 61,161. The final rules became effective on October 17, 1983.

[4] *See* Attachment A for a complete list of intervenors.

[5] Columbia River Inter-Tribal Fish Commission, California Energy Commission, California Public Utilities Commission, and the California Utilities.

[6] National Marine Fisheries Service, Columbia River Inter-Tribal Fish Commission, and the Northwest Environmental Defense Center.

[7] California Utilities, Public Utilities Commission of California, and the California Energy Commission.

385.214), the timely motions to intervene serve to make the timely movants parties to this proceeding absent opposition within fifteen days of their respective pleadings. Given the shortened comment period necessitated in these dockets, the early stage of these proceedings, and the fact that the interventions should not unduly delay the proceeding of prejudice any other party, the late-filed motions of the California Energy Commission, the Northwest Environmental Defense Center, the Public Generating Pool, the Association of Public Agency Customers, and Representative James Weaver will be granted.

As noted above, BPA has requested approval of these rates on a final basis as of November 1, 1983. In the alternative, BPA seeks interim approval as of that date. The current filing represents the second BPA request for interim rate approval under Part 300 of the Commission's regulations. In each instance, BPA has requested waiver of the 90 (now 60) day advance filing requirement, citing delays in its rate development process. Bonneville's last rates were filed 45 days before the requested effective date; the instant proposal was submitted just 29 days in advance of the proposed effective date (BPA initially requested waiver for the current rates by letter dated August 18, 1983). On both occasions, BPA has advanced the claim that, despite its substantial delay, failure to promptly implement the rates would result in a significant shortfall of Federal revenue recovery. We note that we question the justification for BPA's contractual "filing windows" which effectively compel this agency to act within whatever period Bonneville provides. However, in recognition of Bonneville's timing difficulties, the Commission has recently abbreviated the advance filing requirement to 60 days. This period *must* be considered an *absolute* minimum if the Commission is expected to undertake any meaningful review and affected parties are to be given any reasonable period in which to offer comments. In the present case, our staff has made extraordinary efforts to review a filing consisting of 8 large cartons of material in a very short time. This is an untenable situation. We recognize that BPA encountered certain unique circumstances in developing the instant rates; in particular, publication of the initial rate proposals was delayed by nearly two months to allow for an extensive reexamination of the rate proposals. Having been apprised of this delay and Bonneville's intention to seek a waiver of the advance filing requirements, our staff attempted to cooperate with BPA in order to obtain as much pre-filing information as possible. However, the waiver request and the timing of BPA's filing have substantially limited the Commission's options. While we shall reluctantly grant BPA's request for waiver in this case, we emphasize that Bonneville should take whatever steps are necessary, including review of contractual arrangements if necessary, to assure that such delay does not arise again.

Due to the complexities of the filing and the extreme time constraints placed upon the Commission by BPA's delay in filing these rates, it is impossible at this time for the Commission to make a determination with respect to BPA's request for final approval. Therefore, our current review will be limited to consideration on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis. We also shall make separate determinations with respect to the wholesale power and transmission rates for the reasons discussed below.

The Commission's regulations, in Part 300, set forth the standards to be used in considering appropriate action with respect to a request by the Administrator for interim approval of rates. Our initial review suggests that the wholesale power rate schedules proposed in the filing are developed at a level which, assuming accurate cost and revenue estimates, would produce the needed revenues to allow BPA to meet its financial obligations and to repay deficits incurred in previous years. Thus, on its face, Bonneville's system power rates appear to comply with the applicable provisions of the Regional Act. This observation, of course, is based upon the limited analysis possible in view of BPA's proposed effective date and is being made without the benefit of more comprehensive public comments and an in-depth Commission analysis. Given these time constraints, we shall deny at this time the California Utilities' request for summary rejection of the NF-83 rates. We are not persuaded by the information provided that the later availability of refunds will constitute an inadequate remedy for the concerns raised. We also find insufficient cause at this time to reject Bonneville's rates based upon the objections raised by the California intervenors or the claims relating to Bonneville's purported failure to comply with the fish and wildlife requirements of the Regional Act. These findings, however, are without prejudice to our further consideration of the issues raised in the pleadings and, if appropriate, disapproval of Bonneville's rates at a later date. A more detailed review of BPA's proposal will be conducted for purposes of determining whether the rates should be confirmed and approved on a final basis. We shall grant Bonneville's request for approval of the proposed wholesale power rates on an interim basis for a period of one year or until final approval is granted. We cannot, however, make the same conclusions with respect to BPA's transmission rates.

By order of August 3, 1982, we approved BPA's 1976 transmission rates on a final basis, but ordered BPA to implement a separate accounting of costs for its transmission system. 20 FERC ¶61,142. Specifically, we ordered BPA to maintain a separate accounting of revenues and deficits of the transmission system attributable to the Federal and non-Federal users. We also required BPA to provide an accounting for its transmission system separate and apart from the accounting for its generating system. That order stated:

> Bonneville shall be required to provide a readily identifiable accounting of its transmission system costs and the revenues generated from its use, along with the status of repayment of each major segment of investment in transmission facilities. Only by providing such an accounting can the Commission assure that the statutory standards of sections 9 and 10 of the Transmission Act have been met, and that Bonneville's rate schedules will provide a sufficient level of revenues to Bonneville to recover its capital costs and to repay the U.S. investment in the system over a reasonable period of time. Such an accounting will also allow the Commission to more easily determine whether transmission costs have ben equitably allocated between Federal and non-Federal users. *Id.* at 61,315.

BPA did not seek rehearing of that order. Indeed, BPA later requested an extension of our interim approval of its 1981 transmission rates, citing attempts to comply with the August 1982 order as the basis for additional time. 22 FERC ¶ 61,178 (1983). On June 15, 1983, we approved those rates on a final basis, despite the fact that BPA had not yet initiated a system of separate accounting, since the proposed rates were developed prior to the August 1982 order. 23 FERC ¶ 61,378. We approved those rates, however, based in part upon what we construed as assurances by BPA that a separate accounting would be forthcoming in its 1983 rate filing, in accordance with our order.[8]

[8] The Commission also found that none of the issues raised by the intervenors would have justified rejection of the rates.

BPA's 1983 filing has finally arrived, but without the separate accounting mandated. In his letter of transmittal, the Administrator explicitly states that Bonneville has not complied with our order and requests reconsideration of our directive. The Administrator states that implementation of "separate accounting would lock BPA into recovering fixed shares of transmission system costs from Federal and non-Federal customers regardless of changes in relative usage." Letter at 3. We are not persuaded by this reasoning.

Section 7(a)(2)(C) of the Regional Act expressly states that rates approved by this Commission must be found to "equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system." In our August 1982 order, we stated that such a determination cannot be made without the separate accounting information. We can no longer rely on the fact that Bonneville has had inadequate notice or opportunity to develop such information.

BPA's refusal to comply with our order precludes any type of tracking system which demonstrates that: (1) Transmission revenues are only used to repay transmission costs; (2) costs assigned to transmission are ony transmission related costs; and (3) any deficiencies or surpluses in transmission revenues are being tracked and collected or credited to the appropriate customer class.[8] Without this information, we cannot determine whether BPA's transmission rates satisfy the statutory requirements of the Regional Act, as well as similar provisions in sections 9 and 10 of the Federal Columbia River Transmission System Act.

On the other hand, we also have the statutory obligation to protect the interests of the Federal Treasury. Approximately one-half of BPA's transmission contracts contain a notice provision which BPA reads as potentially precluding it from adjusting rates for a number of months if the rates are not permitted to take effect on November 1, 1983.[10] This situation has been created by BPA in that it has negotiated contracts with these provisions and has failed to account for its filing delay under the contracts. As noted above, this situation places the Commission "between a rock and a hard place,"—a situation which BPA uses to its advantage.

We believe, however, the contractual provisions, however narrowly interpreted, must not be used to force the Commission to approve rates, even on a temporary basis, when there is insufficient information to analyze the rates. Consequently, pursuant § 300.20 of the Commission's regulations, we shall deny BPA's request for interim approval of its transmission rate filing for failure to comply with our order of August 3, 1982, and our resulting inability to find that the transmission rates comply with the applicable provisions of the Regional Act. We recognize that denial of interim approval may temporarily hinder BPA's efforts to meet its Federal repayment obligations. We cannot, however, abrogate one statutory obligation in favor of another. Based on the information provided in BPA's filing, we cannot make even a preliminary determination that the proposed rates equitably allocate the transmission costs between Federal and non-Federal customers. We note that the filed rates would increase BPA's revenues from power sales in operating year 1985 by 17 percent, while transmission revenues would increase by 40 percent. Since the Federal transmission rates are rolled into the power system rates, it would appear that the transmission rates (which apply only to non-Federal users) have been disproportionately increased. Due to the lack of accounting information, we are unable to determine whether the disproportionate increase is justified or whether this increase in transmission rates reflects an assignment of the Federal transmission revenue deficiencies from power sales to non-Federal transmission customers.

We note that BPA's current rate, as established in Docket No. EF81–2021–000, will expire as of December 31, 1983. We shall extend the current rate for a period of one year. BPA is directed to cure the deficiency in its filing by submitting the separate accounting information a soon as possible. While this may not remedy BPA's losses due to contractual limitations, it will, however, substantially mitigate its losses under all of its transmission contracts, particularly the approximately one-half which do not contain the limited adjustment notice provision.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow an additional period during which parties may comment on any and all issues related to final confirmation and approval of BPA's rates. In particular, the parties are invited to comment on the need for a further hearing before this Commission.

The Commission orders:

(A) The untimely motions to intervene of the California Energy Commission, Northwest Environmental Defense Center, the Public Generating Pool, the Association of Public Agency Customers, and Representative James Weaver are hereby granted pursuant to the Commission's Rules of Practice and Procedure.

(B) The California Utilities' motion for partial summary rejection of Bonneville's NF–83 rates is hereby denied without prejudice.

(C) BPA's request for waiver of the advance filing requirement is hereby granted.

(D) BPA's request for interim approval of its transmission rates submitted in Docket No. EF84–2021–000 is hereby denied. BPA is directed to cure the deficiency in its filing by submitting the separate accounting information previously required by the Commission. Confirmation and approval of the current transmission rates, which would otherwise expire on December 31, 1983, is hereby extended for a period of one year until December 31, 1984.

(E) BPA's wholesale power rates are hereby permitted to be placed into effect on an interim basis, for a period of one year effective November 1, 1983, subject to refund with interest as set forth in Part 300 of the Commission's regulations, pending final confirmation and approval, or disapproval of BPA's wholesale power rates and charges.

(F) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's rates. The parties should specifically delineate in their comments any and all issues that they feel should properly be set for hearing under section 7(k) of the Act in light of the Commission's interpretation of the Act set forth in its September 1, 1982 order resolving the scope of the Commission's jurisdiction (20 FERC ¶ 61,292). All timedly comments will be considered by the Commission in

[8] The transmission rates at issue in this proceeding apply only to non-Federal customers using BPA's transmission facilities. Bonneville's wholesale power customers receive transmission as an unsegregated element of service under the wholesale power rates. Thus, while the distinction between generation and transmission costs is relevant, if the total cost recovery is appropriate under the power rates, this distinction is not a critical factor for purposes of our review. However, to the extent that something other than transmission costs is recovered from non-Federal users under the specified transmission rate, the allocation between Federal and non-Federal users is directly at issue.

[10] We believe that other interpretations of this contract language could be advanced although, for present purposes, we believe that Bonneville is in the best position to construe the terms of its relevant contracts.

determining the ultimate disposition of BPA's rate proposals.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Filings in Response to "Notice of Filing" (issued October 4, 1983) in the Matter of Bonneville Power Administration's Wholesale Power Rates, Docket EF842011–000, and Transmission Rates, Docket EF84–2021–000

Filing entity	Representing
(1) Public Power Council	A nonprofit Washington (State) Corporation consisting of 116 consumer-owned utility customers of BPA.
(2) Direct Service Industries.	Aluminum Company of America; ARCO Metals Co.; Carborundum Co.; Crown Zellerback Corp.; Georgia-Pacific Corp.; Intalco Aluminum Corp.; Kaiser Aluminum and Chemical Corp.; Martin Marietta Aluminum Inc.; Oregon Metallurgical Corp.; Pacific Carbide and Alloys Co.; Pennwalt Corp.; and Reynolds Metals Co.
(3) Hanna Nickel Smelting Co.	
(4) Columbia River Inter-Tribal Fish Commission.	Nez Perce Tribes; Confederated Tribes of the Umatilla Indian Reservation; Confederated Tribes of the Warm Springs Reservation of Oregon; and Confederated Tribes and Bands of the Yakima Indian Nation.
(5) National Oceanic and Atmospheric Administration, U.S. Department of Commerce.	National Marine Fisheries.
(6) Utah Power and Light Co.	
(7) Idaho Power Co.	
(8) Puget Sound Power and Light Co.	
(9) California Utilities	Southern California Edison Co.; Department of Water & Power, city of Los Angeles; Public Service Department, city of Glendale; Water and Power Department, city of Burbank; Water and Power Department, city of Pasadena; San Diego Gas and Electric Co.; and Pacific Gas and Electric Co.
(10) Public Utility Commission of the State of California.	
(11) Northwest Utilities	Portland General Electric Co., Pacific Power and Light Co.; Washington Water Power Co.; CP National Corp.; and Montana Power Co.
(12) California Energy Commission.	
(13) Northwest Environmental Defense Center.	
(14) Public Generating Pool.	Eugene Water and Electric Board; City of Seattle Light Department; City of Tacoma; Chelan County Public Utility District; Cowlitz County Public Utility District; and Douglas County Public Utility District.
(15) Association of Public Agency Customers.	
(16) United States Representative James Weaver.	

[FR Doc. 83-29651 Filed 11-1-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66102; PH-FRL 2458-7]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protect Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Distribution or sale of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: December 2, 1983.

ADDRESS:

By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
246–117	D–H Polyram 3.5 Dust Fungicide	Daly-Herring Co., P.O. Box 428 Kinston, NC 28501	Mar. 27, 1967.
279–2967	Terraclor 5 Zineb 2.5 Thimet 5 Coated Granules	FMC Corporation, 2000 Market St., Philadelphia, PA 19103	Mar. 13, 1975.
390–44	Pettit Marine Paint Unepoxy Anti-Fouling 1020 Clear Tropic Formula	Pettit Paint Co., Inc., P.O. Box 378, Borough of Rockaway, NJ 07866	Sept. 15, 1972.
476–1166	Zineb 5 Dust	Stauffer Chemical Co., 1200 S. 47th St., Richmond, CA 94804	Oct. 9, 1957.
476–1912	Methl Parathion-Thiodan 2-3-E	do	Dec. 10, 1965.
1706–56	Nalco 2708	Nalco Chemical Co., 2901 Butterfield Road, Oak Brook, IL 60521	Sept. 3, 1964.
2124–543	Naco Parathion Ferbam 1–11.4 Dust	W. R. Grace and Co., Agricultural Chemicals Group, P.O. Box 277 Memphis, TN 38101.	Apr. 13, 1967
2124–589	Naco Lindane-Maneb-Sulphur Dust Squash Special	do	Sept. 13, 1967
2342–729	Fasco Polyram R Boron Dust 5-2.4	Kerr-McGee Chemical Corp., Kerr-McGee Center, Oklahoma City, OK 73125	Apr. 6, 1971.
2342–877	5.6 Maneb Dust	do	June 30, 1967
8120–41	Amercoat 279 Anti-fouling	Ameron Protective Coatings Division, P.O. Box 1020, Brea, CA 92621	Sept. 21, 1981.
8120–47	Amercoat 67S Red, Anti-fouling	do	Mar. 10, 1982.
10363–1	Weco Weed Killer 104	Weco Chemical Co., Inc., 825 Foxwood Circle Geneva, IL 60134	Feb. 18, 1969.

The Agency has agreed that each cancellation shall be effective December 2, 1983, unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continued in

commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Sale or distribution of any quantity of any of these products produced after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66102]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Room 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended, 86 Stat. 973, 89 Stat. (751, 7 U.S.C. 136))

Dated: October 18, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 83-29458 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30222B; PH-FRL 2458-8]

Cosan Chemical Corp.; Approval of Application to Conditionally Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has conditionally approved the application by the Cosan Chemical Corp. to register the preservative Cosan 145 containing an ingredient not included in any previously registered pesticide product, pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: John Lee, Product Manager (PM) 31, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 252 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3675).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of January 12, 1983 (48 FR 1349) which announced that Cosan Chemical Corp., 400 14th St., Carlstadt, NJ 07072, had submitted an application to register the preservative Cosan 145 containing 50 percent of the active ingredient Methanol [[[2-(dihydro-5-methyl-3(2*H*)-oxazolyl)-1-methylethoxy]methoxy] methoxy], an ingredient not included in any previously registered product.

The application was approved on September 21, 1983 for general use in pesticide formulation. The product was assigned EPA Registration No. 8489-28.

A copy of the approved label and the list of data references used to support the registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration data. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: October 18, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 83-29457 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL 2462-6]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held on November 29 and 30, 1983, at the Ramada Hotel of Old Town, United Way (2nd Floor), 901 North Fairfax Street, Alexandria, Virginia 22314. The commercial telephone number is (703) 683-6000.

The tentative agenda for the meeting is as follows:

November 29 (Tuesday)

9:00 a.m.

Introduction of new Members of the National Air Pollution Control Techniques Advisory Committee

Nitric Acid Plants, Review of Standards of Performance for New Stationary Sources (Section 111 of the Clean Air Act)

Secondary Brass and Bronze Plants, Review of Standards of Performance for New Stationary Sources (Section 111 of the Clean Air Act)

Mercury, Review of National Emission Standards for Hazardous Air Pollutants (Section 112 of the Clean Air Act)

Determination of Nonsulfuric Acid Particulate Matter From Stationary Sources, Discussion of Test Method 5B

November 30 (Wednesday)

9:00 a.m.

Continuation of November 29—As required

Coke Ovens, Discussion of Emerging Technologies for Consideration in National Emission Standards for Hazardous Air Pollutants (Section 112 of the Clean Air Act)

Flares as Volatile Organic Compounds Control Devices, Current Status

All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by November 23, 1983. The commercial telephone number is (919) 541-5571, and the FTS number is 629-5571.

The dockets containing material relevant to nitric acid plants (A-83-34), secondary brass and bronze plants (A-83-06), mercury (A-82-41), and nonsulfuric acid particulate matter (A-81-05) are located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby-Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The dockets may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Dated: October 21, 1983.

Shelton Meyers,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 83-29756 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

[SA-FRL 2462-4]

Science Advisory Board Environmental Engineering Committee Open Meeting—November 17-18

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee

(EEC) of the Science Advisory Board will be held in Conference Room S–353, U.S. Environmental Protection Agency, 401, M Street, SW, Washington, D.C. on November 17–18, 1983. The meeting will begin at 9:00 am and will last until approximately 5:00 pm each day.

The agenda for the meeting will include final action on the Committee's review of technical documents supporting the proposed effluent guidelines for the pesticides industry, briefings on Agency sludge management and RCRA programs, and consideration of future Committee activities.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382–4126. Public comment will be accepted at the meeting. Written comment will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comment must contact Mr. Torno prior to November 14, 1983, in order to be placed on the agenda.

EPA has recently instituted new visitor control procedures. In order to minimize any inconvenience, persons wishing to attend are requested to call at (202) 382–2552, so that they may be included on a roster that will be prepared for the building security guards. Attendees are also requested to enter the building at the West Tower entrance.

Dated: October 26, 1983.

Terry F. Yosie,

Science Advisory Board.

[FR Doc. 83-29722 Filed 11-1-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 83–1010, File No. BPIH–821129AH, et al.]

Applications; Phoenix Media Corp. et al.; Order

In re applications of Phoenix Media Corp., MM Docket No. 83–1010, File No. BPIH–821129AH; Barnes, London, & Lockhart d.b.a. Long Island Radio, MM Docket No. 83–1011, File No. PHIH–830223AA; Island Sound Communications MM Docket No. 83–1012, File No. BPIH–830223AB; Nassau Broadcasting, Inc., MM Docket No. 83–1013, File No. BPIH–830223AF; for interim authority to operate the facilities of Former Station WLIR(FM) Garden City, New York. (92.7 MHz, Channel 224, 1 kW at 5213 feet) (10–13–83; 48 FR 46620).

Adopted: October 21, 1983.

Released: October 26, 1983.

By the Commission.

1. The Commission, by the Chief, Mass Media Bureau, acting under delegated authority, adopted a Memorandum Opinion and Order on September 21, 1983 (Mimeo No. 6820, released October 4, 1983) designating the above-captioned applications for oral arguement before the Review Board.

2. It is order, That, on our own motion, the aforementioned Memorandum Opinion and Order is hereby rescinded.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 83-29705 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83–1149; File No. 26008–CL–P–(8)–82, et al.]

Advanced Mobile Phone Service, Inc. et., al.; Memorandum Opinion and Order Granting Application, Dismissing and Designating Applications for Hearing

In re applications of Advanced Mobile Phone Service, Inc., GTE Mobilnet of San Diego, Inc.; File No. 26008–CL–P–(8)–82, File No. 26050–CL–P–(7)–82, for construction permits to establish a cellular system operating on frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the San Diego, California, Standard Metropolitan Statistical Area; and in re applications of Gencom, Inc., CC Docket No. 83–1149, File No. 26034–CL–(10)–82, Metro Mobile CTS, File No. 26065–CL–P–(9)–82, Cellular Mobile Systems of California, Inc. File No. 26179–CL–P–(12)–82, for construction permits to establish a cellular system operating on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the San Diego, California, Standard Metropolitan Statistical Area.

Adopted October 18, 1983.

Released October 24, 1983.

By the Common Carrier Bureau.

1. Before the Bureau are the captioned applications filed by wireline carriers Advanced Mobile Phone Service, Inc. (AMPS) and GTE Mobilnet of San Diego (GTE), and by nonwireline carriers Gencom, Incorporated (Gencom), Metro Mobile CTS (Metro Mobile), and Mobile Systems of California, Inc. (CMS), for new cellular radio systems to serve the San Diego, California, Standard Metropolitan Statistical Area (SMSA). AMPS and GTE have filed a Limited Partnership Agreement, together with a Joint Request for Approval of Agreement, which would result in the granting of AMPS' amended application and the dismissal of GTE Mobilnet's application.[1] Metro Mobile and CMS filed Petitions to Dismiss or Deny against Gencom's and each other's applications. Metro Mobile and the U.S. Department of Justice (DOJ) filed comments on the wirelines' Joint Request, and Gencom filed a Petition to Defer Grant of Construction Permit.

2. As discussed below, we find that the petitions fail to raise any substantial and material issues requiring designation for hearing. We are granting the AMPS application, as amended, and dismissing the GTE application. The Gencom, Metro Mobile, and CMS applications are electronically mutually exclusive; accordingly, we are designating those applications for a comparative hearing in accordance with *Cellular Communications Systems*, Docket No. 79–318, 86 FCC 2d 469 (1981), *modified*, 89 FCC 2d 58 (1982), and *further modified*, 90 FCC 2d 571 (1982). We are also requiring that the CMS application be modified, as set forth below.

Gencom Application

3. In its petition, Metro Mobile alleges that Gencom failed to demonstrate that it has funds available and committed to construct and operate for one year, and, therefore, Gencom has not demonstrated that it is financially qualified. Metro Mobile also states that a lawsuit alleging anticompetitive behavior has been filed against D/FW Signal, Inc. (D/FW, a corporation in which Communications Industries (CI), Gencom's parent, is a shareholder; if the allegations are proven correct, Metro Mobile argues, they could reflect adversely on Gencom's qualifications to be a licensee. CMS argues that Gencom in its proposed tariff has included charges for equipment that was to be detariffed and that, therefore, the application is defective. CMS also argues that the Gencom application is defective because it has not provided essential engineering data concerning the interconnection of its base stations by point-to-point microwave links.

4. *Financial Qualifications.* We find Metro Mobile's argument that Gencom has not demonstrated it is financially qualified to be without merit. Gencom estimates its costs and first year operating expenses for San Diego at $7.6 million. Gencom's aggregate costs and expenses for its six cellular applications in the 30 largest cities are estimated at $32.3 million. To finance these

[1] The Joint Request, reflecting agreement, was filed on November 9, 1982, and appeared on Public Notice Report No. CL–7, dated November 29, 1982

obligations, Gencom relies on existing cash of $10 million, a cash surplus of $10 to $20 million to be generated from internal funds, a $30 million line of credit at the First National Bank in Dallas [2] and equity financing of $40 million. In *Celcom Communications Corp. of Georgia (Atlanta Order)*, Mimeo No. 1988, released January 26, 1982, the Bureau found that Gencom had provided reasonable assurance of sufficient funds to cover construction of six proposed cellular systems. The Bureau further concluded that no financial issues should be designated for hearing against Gencom based on the ability of Gencom to finance the construction and operation for one year of the six cellular systems. Those findings control the disposition of CMS's argument here.

5. Two issues are raised by Metro Mobile concerning Gencom's San Diego financial showing that were not raised in the *Atlanta Order*. One concerns Gencom's ability to rely on its current assets because the liquidity of the marketable securities, inventories, accounts receivable and other assets [3] has not been demonstrated; the second concerns whether Gencom properly estimated its first year operating expenses in view of the apparent exclusion of certain salaries. We reviewed CI's balance sheet in the *Atlanta Order* and found that CI may rely on net liquid assets of approximately $9 million in cash and receivables. Together with the $28 million available from a letter of credit (Gencom may draw down approximately $28 million of the $30 million line of credit), Gencom would have available $37 million, or $4.7 million more than the projected requirements of $32.2 million. Thus, the liquidity of the other assets is irrelevant for determining Gencom's basic financial ability to construct and operate its San Diego facility. Similarly, that there may be a modest understatement of salary expenses—a point that Gencom denies—is irrelevant in light of the surplus of funds available to cover relatively minor, unspecified expenses.[4]

6. *Character Qualifications.* As to Metro Mobile's allegations against CI's character, the litigation in question is a private action filed by Radio Relay Corporation—Texas, against the nine other shareholders, of D/FW Signal, Inc., a cellular applicant in the Dallas-Ft. Worth market.[5] As discussed in the *Atlanta Order, supra*, at para. 16, the Commission has been reluctant, especially with regard to cellular proceedings, to inquire into allegations pending in another forum, but it is the Commission's usual practice to condition any award to taken into account the pending litigation. *Peoples Broadcasting Corporation, et al.*, 68 FCC 2d 1569, 1573–74 (1978). We will include a condition here,[6] but we emphasize that it would be premature to examine this matter in a cellular comparative hearing.

7. *Technical Defects.* CMS' allegation that Gencom's application is defective for not providing engineering information as to its point-to-point microwave interconnection is without merit. Common Carrier Public Notice, Mimeo No. 567, released November 1, 1982, at page 3, stated that applicants need not include in their applications microwave applications and/or authorizations to connect the cell sites with the system control station to meet the required basic qualifications, and that no comparative preference would be accorded to an applicant submitting such interconnection information. The Public Notice reflects the absence of any requirement in the cellular rules, specifically, or in Part 22 of the rules, generally, that applicants specify the method of connection transmitter sites with swithces and control points. As to CMS' allegation concerning Gencom's improper tariffing of mobile equipment, we find it to be without merit. Gencom in its response points out that it did not provide a tariff but only a schedule of proposed charges as required by FCC Form 401. Gencom also states that it will comply with the requirement that it offer mobile equipment on a non-tariffed basis. We find that Gencom's reponse is sufficient, and its application is not defective in this respect.[7]

Metro Mobile Application

8. In its petition, CMS alleges that Metro Mobile has failed to demonstrate the requisite technical qualifications because it has made no showing of site availability, has not demonstrated the basis on which it will determine when system expansion is warranted, and has failed to offer the requisite assurances of continuous service. CMS also alleges that Metro Mobile has failed to demonstrate its financial qualifications. In response, Metro Mobile argues that its application contains an adequate demonstration of the reasonable assurance of site availability, fully explains its system expansion plans, and provides for continuous and reliable public service. Metro Mobile also responds that it has demonstrated that it has the requisite financial qualifications as required by Section 22.917 of the rules.

9. *Technical Qualifications.* CMS's arguments as to Metro Mobiles's tecnical qualifications are without merit. First, in its application Metro Mobile stated that it had " . . . received from the owner or the authorized agent of the owner of each of the cell sites proposed herein a commitment to lease or to negotiate a lease for the land, building, and/or tower space necessary to construct the facilities proposed at each location." (FCC Form 401, Ex. 10 p. 4). In its reply, Metro Moble further states that before it filed its application, it contacted the owner or the authorized agent of the owner of each site proposed and obtained a written letter summarizing the arrangements. By a minor amendment to its application dated July 29, 1982, Metro Mobile provided these written documents evidencing site availability, and CMS has not provided any information to the contrary. All that the Commission requires is that an applicant demonstrate a reasonable assurance of the sites being available, and we find that Metro Mobile has met that burden. *Sampson Broadcasting Co., Inc.*, 52 FCC 2d 954, 959 (1975); *Silver Beehive Telephone Company*, 35 FCC 2d 333, 336 (Rev. Bd. 1972). Second, Metro Mobile in its application set forth its method for determining when to expand its system and the grade of service objectives to be followed (FCC Form 401, Ex. 5 & 6). Absent any showing to the contrary, this information satisfies the rules. Finally, we also find CMS' argument that Metro Mobile has failed to provide assurance of continuous service to be without merit. In its maintenance proposal, Metro Mobile states that it will have sufficient spare parts as well as full complement of qualified RF and switch technicians specifically trained in the operation, maintenance and repair of equipment. Metro Mobile's showing in its application does not conflict with any Commission rule or policy. Our rules do not require that an applicant demonstrate "hot standby" transmitters

[2] The First National Bank of Dallas has changed its name to Inter First Bank Dallas, N.A. (InterFirst).

[3] We considered that credit to be given accounts receivable in the Atlanta Order, but we did not consider the other three items.

[4] James B. Francis, *et al.*, 41 FCC 2d 303, 310 (Rev. Bd. 1973).

[5] Radio Relay Corporation—Texas v. D/FW Signal, Inc., *et al.*, No. CA3 82-0877 G (N.D. Tex., filed June 7, 1982). In Exhibit 10.4 of its application, Gencom states that it is a defendant in a civil antitrust action brought by Westside Communications of Tampa, Inc., Westside Communications of Tampa, Inc. v. Gencom Incorporated, (Hillaborough County Florida Circuit Court, filed September 16, 1981).

[6] *See* para 29, *infra*.

[7] *See* Advance Mobile Phone Service, Inc. (Buffalo Order), Mimeo No. 1320, released December 14, 1982, at para. 23.

or redundancy in its proposal as CMS suggest.

10. *Financial Qualification.* CMS's argument that Metro Mobile has not demonstrated its financial qualifications to construct and operate its proposed system is without merit. Metro Mobile estimates its costs and first year operating expenses for San Diego at $12.6 million. The aggregate construction costs and expenses for the nine Metro Mobile applications [8] are estimated at $99.3 million. To finance these obligations, Metro Mobile relies on a loan for $115 million from the First National Bank of Chicago (First National). A letter of commitment dated June 1, 1982, from First National was included in the application as Exhibit 6.3. The letter stated that First National is prepared to make available a total credit package of $115 million for the purpose of construction and operation of cellular radio systems. In *Celcom, Inc.* (*Minneapolis Order*), Mimeo No. 1573, released December 30, 1982, the Bureau found that Metro Mobile had provided reasonable assurance that it will have sufficient funds available to cover construction of nine cellular systems in the 30 largest markets.[9] The Bureau further concluded that no financial issues should be designated for hearing against Metro Mobile based on the ability of Metro Mobile to finance the construction and operation for one year of nine cellular systems. Sine CMS has not raised any points particular to the San Diego application, those findings control the disposition of CMS' argument here.

CMS Application

11. In its petition, Metro Mobile contends that CMS has failed to comply with § 22.903 because some of its 39 dBu contours extend beyond its proposed Cellular Geographic Service Area (CGSA). Metro Mobile also argues that CMS has not demonstrated its financial qualifications to construct and operate its proposed system pursuant to Section 22.917 of the rules.

12. *Financial Qualifications.* We find Metro Mobile's argument concerning CMS's financial qualifications to be without merit. Graphic Scanning Corp. (Graphic), CMS' parent company, has committed itself to fund the $9.8 million for the San Diego cellular system. The Graphic commitment letter to CMS covers the projected costs of construction and operation for one year and specifically states that none of those funds have been committed to other cellular system applications or to other projects. We find that this satifies the requirement of Section 22.917(b) that resources used to demonstrate financial ability regarding one cellular system may not include funds committed elsewhere. In the *Chicago Order, supra,* the Commission found that Graphic and its cellular subsidiarires have provided reasonable assurance that they will have sufficient funds available to cover construction of 30 cellular systems in the top 30 markets. The Commission further concluded that no financial issues would be designated for hearing against any Graphic subsidiary based on the ability of Graphic to finance the construction and operation for one year of 30 cellular systems. Those findings control the disposition of Metro Mobile's argument here.[10]

13. *CGSA.* We reject Metro Mobile's argument that the CMS application is defective for its failure to comply with § 22.903 because some of its 39 dBu contours extend beyond its CGSA. Metro Mobile's interpretation of Section 22.903(a) is incorrect, and its reliance on §22.903(d) is misplaced. Section 22.903(a) simply explains how the 39 dBu contours are to be depicted on the required map; it does not equate the boundaries of the 39 dBu contour with the boundaries of the CGSA. As explained in Common Carrier Bureau Public Notice, Mimeo No. 567, November 1, 1982, *de minimis* extensions of the 39 dBu contours into secondary SMSAs or into non-SMSA areas are acceptable. Because the extensions involved here meet this description, we find them to be in compliance with the Commission's rules.[11] Metro Mobile erroneously relies on § 22.903(d), which by its terms applies only to a "presently authorized CGSA," not to one proposed in an application. This section is therefore irrelevant to our present consideration.

14. *Cell site No. CA011011 at 7840 El Cajon Boulevard, La Mesa, California.* CMS proposed a site at 7840 El Cajon Boulevard. The proposed El Cajon site is the location of the San Diego FCC Field Office, and the use of that site by CMS for transmitting purposes could cause interference to the FCC's receiving equipment. The FCC uses the equipment at the El Cajon site to resolve interference problems affecting safety services, to perform routine enforcement duties and for other important Commission activities. Therefore, we will require CMS to find a new site location for cell CA011011, the El Cajon site. Accordingly, CMS is directed to file an amendment to its application specifying a new base station location for cell site CA011011 with the Administrative Law Judge (ALJ) to be assigned to this hearing within 15 days of the publication of this order in the **Federal Register.** The amended cell site application shall not cover any areas not previously covered by the 39 dBu contour of this cell site. The amendment should consider the effects, if any, that this change may have on other parts of the application. Due to this circumstance, brief extensions of time for the applicants to file rebuttal cases may be granted at the discretion of the ALJ.

AMPS Application

15. AMPS is the remaining applicant for wireline Block B in the San Diego market under the terms of the Agreement submitted on November 9, 1982. This Agreement is one of a series of similar agreements by which AMPS, which filed applications on June 7, 1982 in 29 of the top-30 markets, and GTE, which filed in 15 of these markets, together with 18 other wireline companies, proposed to settle their electrically mutually exclusive applications in 18 of the top 30 markets. Pursuant to the terms of the agreements, AMPS will operate cellular systems in twelve markets and GTE will operate cellular systems in six markets. San Diego is one of two markets (St. Louis being the other) in which a wireline—GTE in this case—has agreed to withdraw its application rather than accept a minority share of a new limited partnership. In *Advanced Mobile Phone Service, Inc.* (Los Angeles Wireline Order), FCC 83-124, released April 26, 1983, the Commission considered these agreements and the issues raised by DOJ, among other petitioners, and concluded that approval of the settlement agreements was consistent with the public interest, convenience and necessity. We find the Commission's decision to be dispositiv of all objections to the San Diego Agreement itself.

16. Gencom, in its petition, and Metro Mobile, in its comments, argue that we should defer issuing a construction permit to AMPS until the Commission is ready to issue a construction permit to a nonwireline applicant. Gencom supports

[8] Metro Mobile filed applications in Cincinnati, Denver, Houston, Kansas City, Miami, Minneapolis, Phoenix and Tampa, as well as San Diego.

[9] *See* Advance Mobile Phone Service, Inc., (Chicago Order), 91 FCC 2d 512 (1982, at para. 4, and cases cited therein.

[10] Metro Mobile also argues that CMS cannot rely on projected revenues because its showing was not a convincing evidentiary showing. In response CMS points out that it did not specifically identify revenues as a basis for demonstrating its financial qualifications and is not relying on such funds to demonstrate its financial ability.

[11] The CMS proposal includes extensions westward into the Pacific Ocean, a non-SMSA area, and southward into Mexico, a situation dealt with at note 13, *infra.*

its petition with two studies purporting to demonstrate the harmful competitive impact of a headstart by the wireline carrier. In the *Chicago Order, supra*, at para. 16, the Commission found that it was premature to consider a request for deferral at the time of granting the construction permit. Rather, any such requests are to be considered prior to the issuance of a license to begin commercial operations. For the reasons stated in the *Chicago Order*, we defer any action on Gencom's petition until AMPS files its application for a license on FCC Form 403.

Conclusions

17. Based on our analysis of the applications and our resolution of the contested issues in this order, we find the applicants to be legally, technically, financially and otherwise qualified to construct and operate their proposed cellular system. CMS has been ordered to change the cell site location of Cell CA011011. We emphasize that the amendment ordered here may not be used to give CMS a comparative advantage in the hearing proceeding.

18. Accordingly, it is ordered, pursuant to § 22.29 of the Commission's rules, that the Joint Request for Approval of Agreements and Conditional Dismissal filed by Advanced Mobile Phone Service, Inc., and GTE Mobilnet of San Diego is granted.

19. It is further ordered, that the amended application of Advanced Mobile Phone Service, Inc. is granted, and that the application of GTE Mobilnet of San Diego is dimissed.[12]

20. It is further ordered, that the authorization to AMPS and the authorization to a nonwireline carrier as a result of the proceeding instituted here are conditioned upon the permittees' obtaining antenna structure clearances and upon notification from the Commission of applicable conditions concerning the use of the frequencies along the U.S.-Mexican border.[13]

21. It is further ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Gencom, Incorporated, Cellular Mobile Systems of California, Inc., and Metro Mobile CTS, are designated for Hearing in a Consolidated Proceeding upon the following issues:[14]

(a) To determine on a comparative basis the geographic area and population that each applicant proposed to serve;[15] to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(b) To determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed CGSA in order to meet anticipated increasing demand for local and roamer service;[16]

(c) To determine on a comparative basis the nature and extent of the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities (including switching capabilities);[17] and

(d) To determine, in light of the evidence adduced under the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

22. It is further ordered, That the Separated Trial Staff (the Hearing Division and other individuals specifically designated) of the Common Carrier Bureau is made a party to the proceeding.[18]

23. It is further ordered, That the applicants shall file written notices of appearances under § 22.916(b)(3) of the Commission's rules within 10 days after publication of this order in the **Federal Register**.

24. It is further ordered, That the hearing shall be held according to the procedures specified in § 22.916 of the rules, except as otherwise noted here, at a time and place and before an Administrative Law Judge to be specified in a later order.

25. It is further ordered, That exceptions to the initial decision of the Administrative Law Judge under § 1.276 of the Commission's rules shall be taken directly to the Commission.

26. It is further ordered, That Cellular Mobile Systems of California, Inc., is directed to file the amendment specified in this order within 15 days after publication of this order in the **Federal Register** and that all the applicants are directed to file rebuttal cases under § 22.916(b)(4) of the Rules within 45 days rather than 30 days after publication of this order in the **Federal Register**.

27. It is further ordered, That the Petitions to Deny filed by Metro Mobile and CMS are denied.

28. It is further ordered, That any authorization granted to CMS as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold a cellular license following a decision in the hearing designated in *A.S.D.*

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[12] AMPS will not be authorized to render service to the public during service tests even after it files FCC Form 403 for a license. Service to the public cannot commence until the covering license becomes effective. Equipment tests, however, may be conducted. AMPS' authorization (FCC Form 463) will reflect this condition.

[13] The United States has reached an agreement with Mexico governing cellular operations along the U.S.-Mexican border that will only permit construction of cellular systems in San Diego at this time. Authority to operate is the subject of further discussions with Mexico.

[14] There are two issues that are not to be considered in the comparative hearing. The first is the financial qualifications of the applicants. Financial ability is a basic rather than a comparative qualification for cellular licensing. Cellular Communications Systems, 86 FCC 2d 469, 501–02 (1981). We have found all of the applicants included in the comparative hearing to be financially qualified. The second issue not to be considered is the qualifications of Cellular Mobile Systems of California, Inc. or its parent Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing. A.S.D. Answer Service, Inc., *et al.* (ASD), FCC 82–391, released August 24, 1982. Those issues will be thoroughly reviewed in that separate proceeding and should not be reargued in the context of a cellular hearing. As set forth in para. 28, *infra*, the Commission reserves the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of California, Inc., to hold a cellular license should *ASD* be resolved adversely to any of CMS' affiliate or parent companies or to any of their principals. *See Chicago Order*, at no. 19.

[15] For purposes of comparison, the geographic area that an applicant proposes to serve includes that area within the proposed 38 dBu contours which, in turn, falls within the proposed Cellular Geographic Service Area. Consideration should be given to the presence of densely populated regions, highways, and areas likely to have high mobile usage characteristics as well as indications of a substantial public need for the services proposed. *See* 86 FCC 2d at 502.

[16] In making this comparison, preference should be given to designs entailing efficient frequency use, including not only the applicant's plans with regard to cell-splitting and additional channels, but also the degree of frequency reuse the system will be capable of, and the applicant's ability to coordinate the use of channels with adjacent or nearby cellular systems. *See* 86 FCC 2d at 502–03.

[17] *See* 86 FCC 2d at 503 for a discussion of the relative importance of the evidence submitted under this issue.

[18] Members of the separated trial staff are non-decision making personnel and they will not participate in decision making or agency review on an *ex parte* basis in this case, either directly or through contact with other Common Carrier Bureau personnel. Any investigative or prosecuting functions will be performed by the Separated Trial Staff in connection with its role as a party to the adjudication of these cellular radio applications. All other personnel of the Common Carrier Bureau, unless identified in a subsequent order as required to be separated, are designated as decision-making and they may advise the Commission as to the ultimate disposition of any appeal of an Initial Decision in this proceeding. *See* Communications Act of 1934, as amended, Section 409(c) (47 U.S.C. 409(c)); Administrative Procedure Act of Section 554(c) (5 U.S.C. 554(d)); § 1.1221 of the Commission's rules.

Answering Service, Inc., et al., FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

29. It is further ordered, That any authorization granted to Gencom, Incorporated, is without prejudice to any action the Commission might deem appropriate as a result of the final disposition of the antitrust litigation described in para. 6, and note 5, *supra*.

30. This order is issued under § 0.291 of the Commission's rules and the *Order Delegating Authority*, 91 FCC 2d 633 (1982), and is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the rules may be filed within the time limits specified in those sections. *See also* § 1.4(b)(2).

31. The Secretary shall cause a copy of this order to be published in the Federal Register.

Jack D. Smith,

Chief, Common Carrier Bureau.

[FR Doc. 83-29707 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-1150, File No. BPCT-830208KE, et al.]

Charleston Community Television, Ltd. et. al.; Hearing Designation Order

Adopted: October 20, 1983.
Released: October 25, 1983.

In re applications of Charleston Community Television, Ltd., Charleston, South Carolina, MM Docket No. 83-1150, File No. BPCT-830208KE; Lucille S. Whipper and Glen Thiessen d/b/a, Charleston 24, Ltd., Charleston, South Carolina, MM Docket No. 83-1151, File No. BPCT-830428KO; South Jersey Radio, Inc., Charleston, South Carolina, MM Docket No. 83-1152, File No. BPTC-830429KH; Charleston Television Partners, Charleston, South Carolina, MM Docket No. 83-1153, File No. BPTC-830429KI, for construction permit:

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 24, Charleston, South Carolina.

2. Charleston Community Television Ltd. states that it has not completed its financing arrangements, and that it would make the proper certification promptly after it has completed its financial arrangements. We have not received its financial certification. Accordingly, the applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant connot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

3. Charleston Television Partners specified 2010 feet as the overall height of its antenna supporting structure above ground (AGL) in Section V-C, item 6 of its application. This does not agree with the AGL of 2000 feet in its Engineering Exhibit, page 1, figures 1 and 2. Charleston Television Partners will be required to submit an amendment correcting the discrepancy to the presiding Administrative Law Judge within 20 days after this Order is released.

4. The applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It is further ordered, That Charleston Community Television, Ltd. shall submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after the release date of this Order.

7. It is further ordered, That Charleston Television Partners shall submit to the presiding Administrative Law Judge, within 20 days after this Order is released, an amendment correcting the overall height above ground in Section V-C, item 6, FCC Form 301 or its Engineering exhibit.

8. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

9. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-29709 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1430]

Petitions for Reconsideration of Actions in Rule Making Proceedings

October 21, 1983.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of the Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: American Telephone and Telegraph Company. Manual and Procedures for the Allocation of Costs. (CC Docket No. 79-245)

Filed by: Bennett Feigenbaum, Gary A. Swenson, Parlen L. McKenna & Francine J. Berry, Attorneys for American Telephone and Telegraph Company on 9-29-83.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-29708 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

Burlington Broadcasting Co., Limited, and Metro Program Network, Inc., for Construction Permit; Hearing Designation Order

[MM Docket No. 83-1154, File No. BPCT-830606KF; MM Docket No. 83-1155, File No. BPCT-830607KE]

Adopted: October 21, 1983.
Released: October 27, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above captioned mutually exclusive applications of Burlington Broadcasting Company, Limited (Burlington Broadcasting), Burlington, Iowa and Metro Program Network, Inc. (Metro), Burlington, Iowa for a new commercial television station to operate on Channel 26, Burlington, Iowa.

2. The effective radiated visual power, antenna height above average terrian and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, for the purposes of comparison, the areas and population which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of 64 dBu (Grade B) or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to either of the applicants.

3. Because of the proximity of Burlington Broadcasting's proposed tower to Station KBUR(AM), Burlington, Iowa, any grant of a construction permit to the applicant will be conditioned to ensure that KBUR's radiation pattern is not adversely affected by construction of the proposed facility.

4. Since the Commission is not in receipt of the Federal Aviation Administration's study for Metro, no determination has been made that its proposed tower height and location would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. Section II (Other Broadcast Interests), item 7(d), F.C.C. Form 301, inquires whether an applicant had a broadcast application in any Commission proceeding which left unresolve character issues against it. Metro has not responded to the question. Accordingly, Metro will be required to answer the question by an appropriate amendment, within 20 days after this Order is released, to the presiding Administrative Law Judge.

6. The contour calculations submitted by Metro in Section V–C, item 15, FCC Form 301, do not reflect a main lobe at zero degrees True as indicated in Section V–C, item 7 and Exhibit 4. If the information in Section V–C, item 15 is correct, Metro's proposed station would not encompass all of Burlington with its predicted city grade contour. Accordingly, Metro will be required to file with the presiding Administrative Law Judge, within 20 days after this Order is released, an amendment to correct or verify the information contained in Section V–C, items 7 and 15, and Exhibit 4. If Metro verifies that the information in Section V–C, item 15 is correct, it may submit an amendment (minor amendment only) which contains an engineering proposal which would result in the city grade contour encompassing all of Burlington or a request for waiver of § 73.685 of the rules, to the presiding Administrative Law Judge who shall then specify an appropriate issue.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Metro Program Network, Inc. whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that in the event of a grant of Burlington Broadcasting Company, Limited's application, the construction permit will be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KBUR, Burlington, Iowa, so that that station may commence determining operating power by the indirect method. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, antenna impedance measurements of the AM station shall be made and sufficient field strength measurements, taken at a minimum of 10 locations along each of eight equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior to or simultaneous with the filing of the application for license to cover this permit, the results of the field strength measurements and the impedance measurements shall be submitted to the Commission in an application for the AM station to return to the direct method of power determination.

10. It is further ordered, that the Federal Aviation Administration IS MADE A PARTY RESPONDENT with respect to issue 1.

11. It is further ordered, that, within 20 days after this Order is released, Metro Program Network, Inc. shall submit an amendment containing its answer to item 7(d), Section II, FCC Form 301 to the presiding Administrative Law Judge.

12. It is further ordered, that, within 20 days after this Order is released, Metro Program Network, Inc. shall submit an amendment to the presiding Administrative Law Judge, to either correct or verify the information in Section V–C, items 7 and 15, and Exhibit 4, or request a waiver of Section 73.685 of the Commission's Rules.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-29706 Filed 11-1-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-292]

The Boston Five Cents Savings Bank, Boston, Massachusetts; Final Action, Approval of Conversion Application

Notice is hereby given that on October 3, 1983, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Boston Five Cents Savings Bank, Boston, Massachusetts, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Board at the Federal Home Loan Bank of Boston, P.O. Box 2196, Boston, Massachusetts 02106.

Dated: October 24, 1983.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-29734 Filed 11-1-83; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-293]

Farm & Home Savings Association, Nevada, Missouri; Final Action, Approval of Conversion Application

Notice is hereby given that on September 30, 1983, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Farm & Home Savings Association, Nevada, Missouri, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Board at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

Dated: October 24, 1983.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-29733 Filed 11-1-83; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-295]

First Federal Savings and Loan Association of South Carolina, Greenville, South Carolina; Final Action; Approval of Conversion Application

Notice is hereby given that on October 6, 1983, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of South Carolina, Greenville, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Board at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

Dated: October 24, 1983.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-29731 Filed 11-1-83; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-294]

Landmark Savings Association, Pittsburgh, Pennsylvania; Final Action, Approval of Conversion Application

Notice is hereby given that on October 6, 1983, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Landmark Savings Association, Pittsburgh, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Board at the Federal Home Loan Bank of Pittsburgh, Eleven Stanwix Street, Fourth Floor, Gateway Center, Pittsburgh, Pennsylvania 15222-1395.

Dated: October 24, 1983.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-29732 Filed 11-1-83; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-296]

Nebraska Savings and Loan Association, F.A., Fremont, Nebraska; Final Action, Approval of Conversion Application

Notice is hereby given that on October 7, 1983, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Nebraska Savings and Loan Association, F.A., Fremont, Nebraska, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Board at the Federal Home Loan Bank of Topeka, P.O. Box 176, Topeka, Kansas 66601.

Dated: October 24, 1983.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-29730 Filed 11-1-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 10485]

Availability of Finding of no Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 10485 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, (42 U.S.C. 4321 et seq.), and that preparation of an environmental impact statement is not required. Agreement No. 10485, among Costa Armatori, S.p.A.; Farrell Lines, Inc.; Italia di Navigazione, S.p.A. and Sea Land Service, Inc. proposes to establish a conference in the trade from United States Atlantic Ports and points in the United States via such ports to Italy, Spain and Mediterranean ports of France and to points in Europe via such ports.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this Notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI is available from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83-29765 Filed 11-1-83; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 83–28; In re Agreements Nos. 10457, 10458 10332–3 and 10371–2]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Docket No. 83–28 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. Docket No. 83–28 is an investigation of Agreements Nos. 10332–3, 10457, 10458 and 10371–2.

Agreements Nos. 10332–3 and 10457 are between Korea Marine Transport Company, Ltd. (KMTC) and Nippon Yusen Kaisha (NYK). Under Agreement No. 10332–3, KMTC and MYK are authorized to operate two vessels between Korea and U.S. Pacific Coast ports. The Agreement also provides, among other things, for NYK and KMTC authority to charter up to 420 TEU's per month to Showa Line Ltd. (Showa). Agreement No. 10457 is a space charter arrangement under which the parties will: (1) Provide a three vessel direct service between ports in Korea, Taiwan and Hong Kong and U.S. Pacific Coast ports, and (2) continue to subcharter to Showa.

Agreement Nos. 10371–2 and 10458 are between NYK, KMTC and Showa. Pursuant to Agreement No. 10371–2, NYK and KMTC agree to subcharter to Showa space not to exceed 420 TEU's monthly on vessels in accordance with Agreement No. 10332–3. Under Agreement No. 10458, NYK and KMTC agree to subcharter space to Showa up to 600 TEU's per month.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83-29764 Filed 11-1-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

For further information contact:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880)

Request for revision of existing reports

1. Report title: Report of Bank Holding Company Intercompany Transactions and Balances
Agency form number: FR Y–8
Frequency: Semiannual
Reporters: Bank holding companies
SIC Code: 671
Small businesses are not affected.
General description of report:
Respondent's obligation to reply is mandatory [12 U.S.C. 1844]; a pledge of confidentiality is promised [5 U.S.C. 552(b)(4)].

This required report collects data on the movement of funds between a domestic bank holding company and its subsidiaries, in order to identify broad categories of funds flows, internal transactions and balances that may have an adverse impact on the financial condition of the subsidiary bank(s).

2. Report title: Report of Intercompany Transactions for Foreign Banking Organizations and their U.S. Bank Subsidiaries
Agency form number: FR Y–8f
Frequency: Semiannual
Reporters: Foreign banking organizations
SIC Code: 671
Small businesses are not affected.
General description of report:
Respondent's obligation to reply is mandatory [12 U.S.C. 1844]; a pledge of confidentiality is promised [5 U.S.C. 552(b)(8)].

This report is required by all foreign banking organizations that control a U.S. subsidiary bank, and provides the Federal Reserve System with information to monitor and supervise intercompany funds flows to ensure that U.S. subsidiary banks are not engaging in certain types of unsafe and unsound practices with their foreign owners.

3. Report title: Report of Condition for Edge Corporations
Agency form number: FR 2886b
Frequency: Quarterly
Reporters: All banking Edge and Agreement Corporations
Small businesses are not affected.

General description of report:
Respondent's obligation to reply is mandatory [12 U.S.C. 602 and 625]; a pledge of confidentiality is partially promised.

This report collects financial information about international banking and financing corporations. These corporations are supervised by the Federal Reserve System, and most of them accept deposits that are part of the domestic money supply. The report is used both for supervisory and monetary policy purposes.

4. Report title: Monthly Survey of Loan Commitments
Agency form number: FR 2039
Frequency: Monthly
Reporters: Selected Large U.S. Commercial Banks
Small businesses are not affected.
General description of report:
Respondent's obligation to reply is voluntary [12 U.S.C. 248(a) and (i)]; a pledge of confidentiality is promised [5 U.S.C. 552(b)(4)].

This survey provides information on the volume and composition of loan commitments at selected large U.S. commercial banks. Data are used in current analysis of banking developments and credit market conditions.

5. Report title: Senior Loan Officer Opinion Survey on Bank Lending Practices
Agency form number: FR 2018
Frequency: Up to eight times a year
Reporters: Large U.S. Commercial Banks
Small businesses are not affected.
General description of report:
Respondent's obligation to reply is voluntary [12 U.S.C. 248(a) and (i)]; a pledge of confidentiality is promised [5 U.S.C. 552(b)(4)].

This report collects subjective information from a sample of large U.S. banks on recent changes in bank lending policies with respect to commercial and industrial loans. This information supplements statistical information collected on other reports and is used in analyzing business loan developments and bank responses to monetary policy.

Board of Governors of the Federal Reserve System, October 27, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29665 Filed 11-1-83; 8:45 am]

BILLING CODE 6210-01-M

Proposed Acquisition of Allied Bancshares Leasing Company; Allied Bancshares, Inc.

Allied Bancshares, Inc., Houston, Texas, 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)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Allied Bancshares Leasing Company, Houston, Texas.

Applicant states that the proposed subsidiary would engage in the activities of leasing personal and real property, acting as lessor, agent, broker or advisor in leasing such property. These activities would be performed from offices of Applicant's subsidiary in Houston, Texas and the geographic areas to be served are Texas, New Mexico, Oklahoma, Arkansas, Louisiana, California, and New York.

Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

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 request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than November 25, 1983.

Board of Governors of the Federal Reserve System, October 27, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29661 Filed 11-1-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Gardner Bancorp, Inc.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gardner Bancorp, Inc.*, Morris, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange Bank, Gardner, Illinois. Comments on this application must be received not later than November 22, 1983.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *East River Bancshares*, Benton, Louisiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Benton, Benton, Louisiana. Comments on this application must be received not later than November 25, 1983.

Board of Governors of the Federal Reserve System, October 27, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29662 Filed 11-1-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Holding Companies; Northwest Florida Banking Corporation

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 Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Northwest Florida Banking Corporation*, Quincy, Florida; to acquire 100 percent of the voting shares or assets of Citizens Commercial Bank of Tallahassee, Tallahassee, Florida. Comments on this application must be received not later than November 25, 1983.

B. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Northstream Investments, Inc.*, Geddes, South Dakota; to acquire 83.4 percent of the voting shares or assets of Fort Pierre National Bank, Fort Pierre, South Dakota. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis. Comments on this application must be received not later than November 17, 1983.

2. *Rainwood Corporation*, Omaha Nebraska; to acquire 86.75 percent of the voting shares or assets of Forest City Bank & Trust Company, Forest City, Iowa ("Bank") through acquisition of 100 percent of the voting shares of Bank's parent, Forest City Limited, Forest City, Iowa. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than November 22, 1983.

3. *United Texas Bancshares, Inc.*, Austin, Texas; to acquire at least 80 percent of the voting shares or assets of CenTex Bancshares, Inc., Cranfills Gap, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than November 25, 1983.

Board of Governors of the Federal Reserve System, October 27, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29663 Filed 11-1-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company; Proposed de Novo Nonbank Activities; Union Bancorp

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 the 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 outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment on the application 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 the 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 hearings should identify clearly the specific application to which they relate, and should be sumitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Franciso, California 94105:

1. *Union Bancorp*, Los Angeles, California and its parent holding companies (Standard Chartered Overseas Holdings, Ltd., and Standard Chartered Bank PLC, London, England) (discount brokerage activities; United States): To engage, through its subsidiary, Market Investment Services Corporation, in discount brokerage activities by buying and selling securities solely as agent for the account of customers, without providing underwriting for investment advisory services; and in securities credit lending pursuant to Regulation T. These activities would be conducted from offices in Los Angeles, California, serving potential customers thoughout the country. Comments on this application must be received not later than November 25, 1983.

Board of Governors of the Federal Reserve System, October 27, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29664 Filed 11-1-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 84-2]

Availability of Funds and Request for Application for Loans Under the Community Development Credit Union Program

AGENCY: Office of Community Services, HHS.

SUBJECT: Announcement of availability of funds and request for applications under the Community Development Credit Union Loan Program.

SUMMARY: The Office of Community Services (OCS) announces the availability of funds from the Community Development Credit Union (CDCU) Loan Fund in the amount of approximately $2,700,000 to be awarded in the form of loans on or before December 31, 1983. Applications will be accepted through November 30, 1983. Application and funding procedures are detailed below.

DATES: The deadline for the submission of applications is November 30, 1983. See the section titled "Deadline for Submission of Applications".

FOR FURTHER INFORMATION CONTACT: Mr. Francis Rupp, Division of Business Development Loans, Office of Community Services, 1200 19th Street NW., Room 500, Washington, D.C. 20506, (202) 653-5675.

Authority

This announcement, and the funds made available pursuant thereto, are governed by Pub. L. 97-35, Sec. 623, 633, and 681, 95 Stat. 494, 498, and 518, 42 U.S.C. 9812, 9822, and 9910; Pub. L. 98-63, 97 Stat. 331.

Scope of This Announcement

The Office of Community Services will make available approximately $2.7 million in CDCU loan funds to be obligated on or before December 31, 1983. The funds will be made available in the form of loans. Loans will be

awarded to community development credit unions and to organizations forming such CDCUs. Loans will be made on a competitive basis, utilizing the evaluative criteria described herein, plus any additional relevant information that the Director may receive. Loans of up to $200,000 will be made to existing credit unions, and up to $100,000 for newly created credit unions. The term of the loans will not exceed five years. Loans under this announcement will be governed by new regulations, for which a notice of proposed rule making was published in the Federal Register on August 16, 1983, p. 37042.

Purpose of the Program:

The purpose of this program is to support community based credit unions in efforts to:

(1) Stimulate economic development activities in the community they serve which result in increased income, ownership, and employment opportunities for low-income residents;

(2) Stimulate community revitalization efforts which result in improved community facilities, housing, transportation, etc., and

(3) Provided needed financial and related services to residents of their communities.

Eligible Applicants

Any credit union, and any organization proposing to form a credit union, which meets the requirements of the regulation may apply for assistance under this loan program. See the regulation for the definition and description of community development credit unions.

Application Procedures

Note.—*Prior to the preparation of an application, an applicant should become familiar with the statute, the CDCU Program Regulations, and this program announcement. The statute and regulations contain the basic policy and terms and conditions governing CDCU loans. This program announcement does not repeat everything that is contained in those documents and therefore is not to be considered sufficient by itself as a guide for the preparation of an application for a CDCU loan.*

1. *Availability of Forms:* A kit containing an application form, a copy of the statute, a copy of the CDCU Program regulations, and a copy of this program announcement (which includes instructions for completing applications), and three certification forms may be obtained by writing to: Community Development Credit Union Loan Program, Division of Business Development Loans, Office of Community Services, 1200 19th Street NW., Room 500, Washington, D.C. 20506, or by calling (202) 653–5675.

2. *Application Submission:* Applications should be submitted as follows:

A. The original, plus two copies to: Grants Management Office, Office of Community Services, 1200 19th Street NW., Room 543, Washington, D.C. 20506.

B. A copy to the regional office of the National Credit Union Administration which is appropriate for the location of the applicant.

3. *Intergovernmental Review:* The Community Development Credit Union Loan Fund is not covered by Executive Order 12371, nor the Department's regulation (45 CFR, Part 100) which requires the clearance of applications through State and local governments. Therefore applicants for funds under this announcement are not subject to these clearance procedures and requirements. Nevertheless, applicants are urged to inform and to coordinate with the State and local governments where such information and coordination is appropriate or necessary for the success of the program.

4. *Contents of Application:* Each application must contain the following forms and documents:

A. Three certification forms (which are available in the application kit)—HHS Form 441 "Civil Right Assurance of Compliance; HHS Form 641 "Assurances of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended" and "Certification of Small, Minority, and Women-Owned Businesses ("for-profit" applicants only).

B. The Standard Form 424 "Application for Federal Assistance" consists of five parts:

I. Cover Sheet (pp. 1 and 2)

Instructions for completing this form are attached to the form.

II. Project Approval Information

Instructions for completing form: Items 1–3 will be answered in the negative. Items 4–7 and 9 are self-explanatory. If the answer to item 8 is yes, describe the beneficial or harmful effect of the project on the environment and the action that will be taken to minimize any harmful effect. If the answer to item 10 is yes, state the type of assistance, the source, amount, and status (whether previous, pending or anticipated).

III. Budget Information

Instructions for completing form:

Section A: On line 1, column (a), write CDCU loan. On line 1, column (b), write the Catalog of Federal Domestic Assistance No. 13.663. On line 1, columns (e) and (g), enter the amount of CDCU loan being applied for.

Section B: List in column 1 the estimated expenses attributable to the first year of the CDCU loan for the added lending activity brought about by the CDCU loan funds, plus any other projects or services initiated or expanded due to the CDCU loan assistance or requirements of the CDCU loan agreement (such as the Community Needs Plan). Enter total on line (k). Disragard line 7.

Section C: If any commitments for funds or other assistance from groups or individuals outside the applicant are mentioned in paragraph F of the Program Narrative (Part IV of the SF 424), enter those amounts and sources on line 8.

Section D, E, and F: Do not complete. Instead attach a copy of the most recent financial statements (balance sheet, income statement, and loan delinquency analysis) for the credit union or for the organization forming a credit union. Further, a copy of the most recent credit union examiner's report must be included.

IV. Program Narrative

Instructions for completing this part: The program narrative must follow the format outline below, with each page numbered and a table of contents.

A. Executive Summary

The executive summary should contain all the essential elements of the program including the amount of funds requested, the term of loan requested, why the program is needed, goals, anticipated impact, resouraces to be mobilized from other organizations or agencies, and the applicant's expertise and experience in conducting credit union business and achieving community development and revitalization successes. The length of the summary should not exceed two pages.

B. Description of Applicant and Target Area

The applicant must fully and accurately describe the type and nature of the applicant, including a copy of the statement of field of membership, a description of the target area defined by the community served, and demographic information on the income levels within the target area covered by the field of membership. This information is essential to determine the eligibility of the applicant.

C. Analysis

The nature and extent of the problem, such as chronic dependency, community deterioration, unemployment, low performance schooling, inadequate physical security, inability of community residents to secure financial services such as loans, check cashing, financial counseling, etc. Priority will be given where the need is greatest, the nature of the problem is most clearly documented and analyzed, and proper statistical data is best presented.

D. Program Objectives and Anticipated Impact

The program objectives and anticipated impact are the outcomes of the program activities. They are what the program seeks to accomplish. They should be measurable and projected on the basis of a timetable. Included among them should be increases in credit union membership, assets, services, and loans to members.

E. Program Activities

Program activities should all be aimed at providing a variety of financial and related services designed to meet the particular needs of the low income community served. Activities may include, but are not limited to, those which aim at (a) supporting and stimulating economic development and revitalization efforts within the low income community, (b) providing member services such as financial counseling, and (c) increasing the membership and capitalization base of the credit union.

See the regulation for a fuller delineation of potential program activities. This description of the program activities should include a timetable for implementing the activities, along with an explanation of the staffing required. Also to be included is the current schedule of loan types offered, interest rates, fees, and maturities.

F. Mobilization of Resources

Each credit union will be expected to mobilize resources to the maximum extent possible within its own membership and with the rest of the community. Applications which demonstrate a higher match of increased member share deposits than the minimum required will be given greater consideration (the minimum match being one dollar of increased member share deposits for every two dollars of loan from OCS). Applicants who expect to seek assistance and cooperation from other community groups, or have already done so, should include a complete description of this outreach including documentation of any financial commitments obtained.

G. Ability of Applicant To Perform

The ability of the applicant to conduct a successful credit union program is essential. For existing credit unions, a history for the past two or three years should include all significant events and achievement. For organizations that are forming credit unions, a history of the sponsoring organization for the past two or three years will be needed, with emphasis on the ability to generate successful financial or other business enterprises and to coordinate community improvement programs. A description of the board of directors and managerial staff of the credit union (or organization forming a credit union) will be necessary, including copies of resumes.

V. Assurances

Instructions are self-explanatory.

Review Criteria

All applications received in accordance with the deadline will be reviewed by OCS staff or other Federal officials. The National Credit Union Administration will provide input as to the legal requirements and the capacities of the credit unions and the status of organizations forming credit unions. Selection of applicants for awards of loans will be based upon the following criteria, and the final decision will be made by the Director of OCS, taking into consideration the information presented in the application and from other sources. Applicants who make a commitment to provide a greater match of increased member share deposits than the minimum required shall be given special consideration. General review criteria will be as follows, in descending order of priority:

1. Program Evaluation:
—Problems of the community to be addressed.
—Well coordinated approach by which the program activities will meet the objectives and anticipated impact.
—Description of quantifiable outcomes of the program.

2. Organizational Capability.
—Skills and experience of board members and management adequate to implement the programs and activities.
—Sufficient qualified staff with appropriate training necessary to carry out the proposed services and projects.
—Organizational history of achievements as a credit union (or organization forming credit union).

3. Significant and beneficial Impact:
—Impact towards alleviating the causes of provety and chronic dependency.
—Increased provision of financial services to community members.
—Community development and revitalization efforts.

4. Community Coordination and Liaison:
—Significant linkages with community organizations, including for profit and non-profit groups, governmental agencies, and educational establishments.
—Commitments of funds or other support from the community for credit union's activities.

Loan Terms and Conditions

1. The interest rate will be determined in accordance with the regulation.

2. The term of the loans will not exceed five years from the date of award of the loan.

3. The repayment of the principal and interest will be made according to the regulations.

4. The matching requirements of increased member share deposits are included in the regulation. The base upon which the increase shall be measured will be the total amount of member share deposits as of the date of award of the loan.

5. For organizations forming credit unions, no funds may be drawn down until the credit union has been charatered and able to receive funds on its own.

6. Each credit union shall forward a copy of its Community Needs Plan to OCS upon its completion and submission to the board of directors.

Deadlines for Submission of Applications

1. *Deadlines.* The deadline for the receipt of applications is November 30, 1983. Applications shall be considered as meeting this deadline if they are-

A. received on or before the deadline date at the place specified above under "Application Submission" or

B. sent on or before the deadline date and recived by OCS in time to be considered. (Applicants should be aware that the mail system may be experiencing heavy usage during this part of the year, and are therefore encouraged to use means to ensure prompt delivery so that OCS will be able to consider the application. Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered

postmarks shall not be acceptable as proof of timely mailing.)

2. *Late applications.* Applications which do not meet the criteria in paragraph 1 of of this section are considered late applications. OCS shall notify each late applicant that its application will not be considered in the current competition.

Dated: October 21, 1983.

(Catalog of Federal Domestic Assistance No. 13.663)

Harvey R. Vieth,

Director.

[FR Doc. 83-29054 Filed 11-1-83; 10:42 am]

BILLING CODE 4150-04-M

Office of Human Development Services

Federal Council on the Aging, Meeting

Agency holding the meeting: Federal Council on the Aging.

Time and date: Meeting begins at 8:30 AM on Monday, November 21, 1983 and ends at 7:00 PM.

Place: San Francisco Hilton and Tower, Mason and O'Farrell Sts., San Francisco, CA. This meeting is being held in conjunction with the 36th annual meeting of the Gerontological Society of America.

Status: Meeting is open to the public.

Contact person: Rita Lowry, Room 309D, HHH Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting November 21, 1983 from 8:30 AM to 7:00 PM at the San Francisco Hilton and Tower, Mason and O'Farrell Streets, San Francisco, California.

The agenda will include a presentation to the Gerontological Society of America by the Federal Council on Aging (FCA) on FCA recommendations on the 1984 reauthorization of the Older Americans Act. There will be presentations on "National Employment Policy and Older Americans" and "Diseases of Western Lifestyle". In addition, reports of the Housing, Family Support, and Health Committees will be given at this session.

Dated: October 26, 1983.

Adelaide Attard,

Chairperson, Federal Council on the Aging.

[FR Doc. 83-29716 Filed 11-1-83; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Payback Activities of an Individual after a National Research Service Award (NRSA) as Repayment for Obligated Service Under the National Health Service Corps (NHSC) Scholarship Program

AGENCY: Public Health Service, HHS.

ACTION: General notice.

SUMMARY: The Secretary of Health and Human Services will establish annual notification deadlines for persons who wish to substitute NRSA payback activity after a period of NRSA research training for obligated service under the NHSC Scholarship Program. Persons who wish to substitute the payback obligation under a NRSA institutional award for NHSC scholarship service must submit evidence to the Secretary prior to such deadline that they have received a NRSA appointment. Persons who wish to substitute the payback obligation under a NRSA individual award for NHSC scholarship service should submit evidence to the Secretary prior to the deadline that they have made an application for such award. Failure to meet this deadline will result in the applicant being denied permission for substitution of NRSA payback activity.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Daugherty, Director, Division of Health Service Scholarships, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7-34, Rockville, Maryland 20857. Telephone number 301 443-3744.

SUPPLEMENTARY INFORMATION: Persons receiving support under the NHSC scholarship program section 338A of the Public Health Service (PHS) Act) incur an obligation upon completion of their health services training to practice their profession in a designated health manpower shortage area. This obligation is equal to one year of service for each year of scholarship support received, with a minimum of two years service. The NRSA program section (472 of the PHS Act) consists of a period of award supported research training and, after training is completed, a period of obligated payback activity equivalent to the number of months NRSA support was received. Under section 338B(e) of the PHS Act a person with a scholarship obligation may substitute a period of research activity required as payback under the NRSA program for an equal amount of service obligation time under the NRSC scholarship program. To meet the statutory intent of the NHSA program, the Secretary grants deferments from NHSC obligated service for such periods of time necessary for research training under a NRSA appointment.

To effectively administer the program of repayment of obligated service under the NHSC scholarship program and to make necessary commitments with communities for the assignment of NHSC health service providers, the Secretary has established a notification deadline for persons seeking to substitute NRSA payback activity for their NHSC scholarship service obligation. All NHSC scholarship recipients will receive notification of the established NRSA deadline as they near completion of their approved graduate training.

Persons who wish to substitute NRSA payback activity performed pursuant to a NRS institutional award must submit evidence of a secured appointment to the Secretary by the established deadline. Persons who wish to substitute NRSA payback activity performed pursuant to a NRSA individual award must provide the Secretary with evidence of an application for such an award by the established deadline.

Those individuals who have not submitted the required evidence by the deadline will not be allowed to substitute NRSA payback activity for their NHSC scholarship service obligation. Consequently, no deferment of the commencement of an individual's NHSC obligation service will be granted for the purpose of securing a NRSA institutional award or applying for a NRSA individual award after the established deadline.

Persons who receive a NRSA appointment at any time prior to the completion of their NHSC training, even before they are informed of their NRSA deadline, should notify the Secretary of their NRSA award at the earliest possible time. However, notification of the Secretary at any time prior to the NRSA deadline will be sufficient to meet the requirements of this notice.

Persons who have begun providing obligated service in a health manpower shortage area will not, subsequently, be allowed to substitute NRSA payback activity for the remaining portion of their scholarship obligation service.

(The NHSC Scholarship Program is listed as No. 13.288 in the OMB Catalog of Federal

Domestic Assistance and the NRSA program is listed as No. 13.297.)

Dated: October 28, 1983.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 83-29757 Filed 11-1-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. NI-115]

Finding of No Significant Impact

The Department of Housing and Urban Development gives notice that a Finding of No Significant Impact (FONSI) has been made subsequent to the completion of an Environmental Assessment (EA) for the Vicksburg Subdivision located Missouri City, Fort Bend County, Texas. This Notice is required by the Council on Environmental Quality (CEQ) under 40 CFR Part 1500 and implementing HUD regulations. Interested individuals, governmental agencies, and private organizations are invited to comment on the FONSI. Pursuant to 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, the FONSI and supporting Environmental Assessment will be available for public inspection during regular business hours in HUD's Houston Office, Two Greenway Plaza, Suite 200, Houston Texas.

Issued at Washington, D.C., October 26, 1983.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Notice of Finding of No Significant Impact

Vicksburg Subdivision, Missouri City, Fort Bend County, Texas

(As authorized by 40 CFR Section 1501.4(c)(2)(l).)

The Fort Worth Regional Office of the Department of Housing and Urban Development hereby publishes a Notice of Finding of No Significant Impact for a proposed development to be known as Vicksburg Subdivision located partially within the corporate limits of Missouri City and partially within its extraterritorial jurisdiction, Fort Bend County, Texas. The purpose of this notice is to inform all interested persons, local, State and Federal Agencies of the decision not to prepare an Environmental Impact Statement.

Description—General Homes, Incorporated and the Lexington Development Company, both of Houston, Texas have filed applications with the Houston Office of the Department of Housing and Urban Development to accept the proposed subdivision for mortgage insurance under Section 203(b) of Title II of the National Housing Act of 1934, as amended. The proposed subdivision is located north of State Highway No. 6 and Trammel Fresno Road in Missouri City, Texas. The proposed subdivision will consist of 1,154 acres of land and will provide approximately 4,700 lots for single family development. When fully developed over a ten-year period the subdivision will provide housing for approximately 15,000 persons.

Finding—An Environmental Assessment was prepared by HUD's Houston Office. The assessment has been reviewed by both the Dallas Office and the Fort Worth Regional Office of the Department of Housing and Urban Development. It was found that the proposed subdivision has no environmental concerns that cannot be resolved and that the project will have no significant impact upon the human environment. It is believed that an Environmental Impact Statement need not be prepared as authorized by 40 CFR 150.14(c)(2)(i). It has been determined that the project is in compliance with the National Environmental Policy Act and all related environmental laws and authorities cited in 24 CFR Part 50.

Contact—Comment should be sent within 30 days following the publication of the Notice in the **Federal Register** to I. J. Ramsbottom, 6CE, Regional Environmental Officer, 221 West Lancaster, Fort Worth, Texas 76113. The commercial telephone number of this office is 817-870-5482 and the FTS number is 728-5482. The Environmental Assessment and its supporting documentation may be reviewed at either the Houston Office, Two Greenway Plaza East, Suite 200, Houston, Texas or the Fort Worth Regional Office, 221 West Lancaster, Fort Worth, Texas.

[FR Doc. 83-29660 Filed 11-1-83; 8:45 am]

BILLING CODE 4210-29-M

Office of Secretary

[Docket No. N-83-1293]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be set to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 312, Rehabilitation Loan Program
Office: Community Planning and Development
Form Number: HUD-6230, HUD-6230C, HUD-6236, HUD-6239, HUD-6240, HUD-6243, and HUD-6243A
Frequency of submission: On Occasion

Affected public: Individuals or Households, State or Local Governments, and Federal Agencies or Employees
Estimated burden hours: 8,256
Status: New
Contact: Harold Huecker, HUD, (202) 755–6336; Robert Neal, OMB (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Audit Guide for Audits of Government National Mortgage Association Approved Issuers of Mortgage-Backed Securities for Use by Independent Public Accountants
Office: Inspector General
Form Number: None
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 4,800
Status: Extension
Contact: Dennis A. Raschka, HUD, (202) 755–6397; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Statement of Profit and Loss
Office: Housing
Form Number: HUD–92410
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit and Non-Profit Institutions
Estimated burden hours: 16,000
Status: Extension
Contact: William J. Schick, HUD, (202) 755–6870; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Summary of Guaranty Agreement (to include recordkeeping requirements contained in the Guaranty Applications)
Office: Government National Mortage Association
Form Number: HUD–1716, HUD–1723, HUD–1727, and HUD–1730
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 2,055
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755–5550; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supplemental Application and Processing Form—Housing for the Elderly and Handicapped
Office: Housing
Form Number: HUD–92013–E
Frequency of submission: On Occasion
Affected public: Business or Other For-Profit and Non-Profit Institutions
Estimated burden hours: 300
Status: Extension
Contact: Edward M. Winiarski, HUD, (202) 755–5743; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and in Clear Zones and Accident Potential Zones at Military Airfields
Office: Community Planning and Development
Form Number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations
Estimated burden hours: 25
Status: New
Contact: Gretchen Van Hyning, HUD, (202) 755–6580; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Weekly Opinion Poll of Mortgage Market Conditions
Office: Housing
Form Number: None
Frequency of submission: Weekly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 156
Status: Extension
Contact: John Dickie, HUD, (202) 755–7270; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Jobs Bill Civil Rights Data
Office: Fair Housing and Equal Opportunity
Form Number: EEO–1, EEO–4, and SF–227
Frequency of submission: Annually
Affected public: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Estimated burden hours: 2,564
Status: Revision
Contact: Peter Kaplan, HUD, (202) 755–7727; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Environmental Review Form
Office: Housing
Form Number: HUD–92250
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 2,500
Status: Extension
Contact: Joseph Emmi, HUD, (202) 426–7212; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1983.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration, AD.

[FR Doc. 83-29654 Filed 11-1-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1294]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street S.W., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Extension of Title I Claim Period
Office: Housing
Form Number: HUD–9299
Frequency of submission: On Occasion
Affected public: Individuals or Households and Small Businesses or Organizations
Estimated burden hours: 9,000
Status: Extension
Contact: James L. Anderson, HUD, (202) 755–6880; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 23, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Statement of Taxes
Office: Administration
Form Number: HUD–434
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 150
Status: Extension
Contact: Engene Morroni, HUD, (202) 755–7523; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 23, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Contractor's Prevailing Wage Certificat/Contractor's Requisition
Office: Housing
Form Number: FHA–2403–A and FHA–2448
Frequency of submission: Monthly
Affected public: Businesses or Other For-Profit and Non-Profit Institutions
Estimated burden hours: 60,000
Status: Extension
Contact: Jack Kaufman, HUD, (202) 426–0035; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 23, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Recertifiation of Family Income and Composition
Office: Housing
Form Number: HUD–93101, HUD–93101A, and HUD–93101B
Frequency of submission: Monthly, Annually, and On Occasion
Affected public: Individuals or Households and Businesses or Other For-Profit
Estimated burden hours: 550,000
Status: Extension
Contact: Ann M. Sudduth, HUD, (202), 755–6672; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 23, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Construction Complaint
Office: Housing
Form Number: HUD–92556
Frequency of submission: On Occasion
Affected public: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Estimated burden hours: 4,000

Status: Extension
Contact: Albert Stevens, HUD, (202)755-6700; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 23, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-29655 Filed 11-1-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1295]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Local Appeals to Single Family Mortgage Limits
Office: Housing
Form Number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households
Estimated burden hours: 480
Status: New
Contact: Morris Carter, HUD, (202) 426-7212; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(D).

Dated: September 19, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-29656 Filed 11-1-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1296]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Exective Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Report on Program Activity—Section 8 Moderate Rehabilitation Programs
Office: Housing
Form Number: HUD-52686
Frequency of Submission: Semi-Annually
Affected public: State or Local Governments
Estimated burden hours: 1,000
Status: Extension
Contact: Mary Proctor, HUD, (202) 755-5433; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 15, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Deed-in Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More Than One Property)

Office: Housing
Form Number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households and Businesses or Other For-Profit
Estimated burden hours: 300
Status: New
Contact: Ann Marie Sudduth, HUD, (202) 755–6672; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 15, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Schedule of Subscribers and Contractual Agreement
Office: Government National Mortgage Association
Form Number: HUD–1705
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 2,150
Status: Revision
Contact: Patricia Gifford, HUD, (202) 755–5550; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 15, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-29657 Filed 11-1-83; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-83-1297]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer of the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Operating Budget for Cooperative Housing Corporations
Office: Housing
Form Number: HUD–93240
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 6,610
Status: Extension
Contact: Judy Lemeshewsky, HUD, (202) 755–6870; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42, U.S.C. 3535(d).

Dated: October 11, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Negotiated FHA Interest Rate Program
Office: Housing
Form Number: HUD–9722 and HUD–9723
Frequency of submission: On Occasion
Affected public: Busineses or Other For-Profit
Estimated burden hours: 25,000
Status: Extension
Contact: John N. Dickie, HUD, (202) 755–7271; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Schedule of Charges and Project Information—Housing for the Elderly (Non-Profit)
Office: Housing
Form Number: HUD–92458A
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 165
Status: Extension
Contact: Judy Lemeshewsky, HUD, (202) 755–6870; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Premium Reconcilement
Office: Administration
Form Number: HUD–239A
Frequency of submission: Monthly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 1,500
Status: Revision
Contact: DeOssie Hillard, HUD, (202) 755–7022; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: PHA-Owned or Leased Projects; Maintenance and Operations; Tenant Allowances for Utilities
Office: Housing
Form Number: None
Frequency of submission: On Occasion
Affected public: Individuals or Households and Non-Profit Institutions
Estimated burden hours: 8,000
Status: New
Contact: Charles Ashmore, HUD, (202) 755-6640; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Payments Program for New Construction or Substantially Rehabilitated Projects—Contract Rent Adjustments
Office: Housing
Form Number: None
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 600
Status: New
Contact: James Tahash, HUD, (202) 755-5654; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 11, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-29658 Filed 11-1-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1298]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Alternative Construction ("No Action Letter")
Office: Housing
Form number: None
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 500
Status: New
Contact: Richard Mendlen, HUD, (202) 755-5798, Robert Neal, OMB, (202) 395-716

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 21, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-29659 Filed 11-1-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Commission on Fair Market Value Policy for Federal Coal Leasing; Meeting

AGENCY: Commission on Fair Market Value Policy for Federal Coal Leasing, Interior.

ACTION: Notice of Business Meeting of the Commission.

SUMMARY: Notice is hereby given that the Commission on Fair Market Value Policy for Federal Coal Leasing will hold a Business Meeting on November 9 and 10, 1983. The meeting will be held at 1925 K St., NW., Washington, D.C., Room 740 on November 9th and at the Brick Room, 1015 20th St., NW., Washington, D.C., on November 10th. The meetings will convene at 9:00 a.m. each day.

FOR FURTHER INFORMATION CONTACT: F. Scott Bush, Executive Director, or Sorrell Caplan, Public Affairs Director, Commission on Fair Market Value Policy for Federal Coal Leasing, Suite 400, 1015 20th Street, NW., Washington, D.C. 20036. Phone: (202) 632-6501.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to the authority and requirements of Pub. L. 98-63, approved July 30, 1983, making supplemental appropriations for fiscal year 1983, and for other purposes, and in accordance with the Federal Advisory Committee Act (Pub. L. 92-463).

The Commission on Fair Market Value Policy for Federal Coal Leasing will hold a Business Meeting on November 9-10, 1983, to receive briefings by Department of the Interior personnel and to discuss issues and facts presented at its public hearings October 25-26, 1983. The meeting will commence at 9:00 a.m. each day.

The deadline of January 29, 1984, by which the law requires the Commission to produce a report and recommendations requires that the Commission operate on an expedited schedule. Because of the exceptional cricumstances the usual 15 day notice required of an advisory committee provided for by 41 CFR 107–6.1015(b) has been waived for this meeting.

The Commission was established by Pub. L. 98–63 approved by President Reagan on July 30, 1983, to review Federal coal leasing statutes, policies and procedures to ensure receipt of fair market value. To complete its mandate, the Commission will:

a. Examine the current statutes, plicies and procedures to ensure receipt of fair market value of Federal coal leases;

b. Evaluate efforts to improve the Department's program; and

c. Recommend improvements in those statutes, policies, and procedures.

Dated: October 31, 1983.

David F. Linowes,

Chairman.

[FR Doc. 83-29899 Filed 11-1-83, 8:47 am]

BILLING CODE 4310-01-M

Commission on Fair Market Value Policy for Federal Coal Leasing; Meeting

AGENCY: Commission on Fair Market Value Policy for Federal Coal Leasing, Interior.

ACTION: Notice of Location of Washington, D.C. Meeting.

SUMMARY: Notice is hereby given that the previously announced November 17–18, 1983, meeting of the Commission on Fair Market Value Policy for Federal Coal Leasing will be held in Room 138, Senate Dirksen Office Building, Constitution Avenue between 1st St. and 2nd St., NE., Washington, D.C. The meetings will convene at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: F. Scott Bush, Executive Director, or Sorrell Caplan, Public Affairs Director, Commission on Fair Market Value Policy for Federal Coal Leasing, Suite 400, 1015 20th Street, NW., Wshington, D.C. 20036. Phone: (202) 632–6501.

SUPPLEMENTARY INFORMATION: Follwong a business meeting, the Commission will receive further public testimony on fair market value policy and procedures. All witnesses will be formally invited to testify by the Chairman. Persons who wish to testify before the Commission may make such a request of the Commission staff. The Commission invites written testimony at any time. witnesses testifying at hearing are requested to submit 10 copies of the testimony in writing at least 5 days in advance of their appearance. On the day of the testimony, at least 50 copies of written testimony should be available for distribution at the hearings. Witnesses wil be sworn and all oral testimony recorded.

This notice is published pursuant to the authority and requirements of Pub. L. 98–63, signed July 30, 1983, making supplement appropriations for fiscal year 1983, and for other purposes, and in accordance with the Federal Advisory Committee Act (Pub. L. 92–463)

Dated: October 31, 1983.

David F. Linowes,

Chairman.

[FR Doc. 83-29905 Filed 11-1-83, 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[W-81677]

Wyoming; Conveyance Sale of Public Land in Park County, Wyoming

Notice is hereby given that pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719 (1976), William D. Fields and Joanne Fields have purchased and received a patent for the following described public land in Park County, Wyoming:

Sixth Principal Meridian, Wyoming

T. 57 N., R. 102 W.,
Sec. 20, N½NW¼.

Containing 80.00 acres.

Dated: November 25, 1983.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 83-29653 Filed 11-1-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Meeting Cancellation

Cancellation notice is hereby given for two public hearings of the Santa Monica Mountains National Recreation Area. The announcement, recently published in the **Federal Register** (48 FR 48297, Tuesday, October 18, 1983), listed two meetings: one for Tuesday, November 8, 1983 at 7:30 p.m., in the Elkins Auditorium at Pepperdine University, 24255 West Pacific Coast Highway, Malibu, California; and another on Wednesday, November 9, 1983 at 7:30 p.m. in the City Council Hall Chambers, 401 Hillcrest Drive, Thousand Oaks, California.

The topic for discussion would have been the Code of Federal Regulations, special regulations for the Santa Monica Mountains National Recreation Area.

Dated: October 26, 1983.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 83-29741 Filed 11-1-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-149–150 (Preliminary)]

Barium Chloride and Barium Carbonate From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of Preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: October 25, 1983

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of preliminary antidumping investigations under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a) to determine whether there is a reasonable indication that an industry in the UnitedStates is materially injured, or is threratened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of barium chloride and/or barium carbonate (precipitated), provided for in items 417.70 and 472.06 of the Tariff Schedules of the United States, respectively, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington,D.C. 20436, telephone 202–523–0296.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on October 25, 1983, by counsel on behalf of Chemical Products Corporation, Cartersville, Georgia. The Commission must make its determinations in these investigaions within 45 days after the date of the filing of the petitions, or by December 9, 1983 (19 CFR 207.17).

Participation

Persons wishing to participate in either or both of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the persons desiring to file the notice.

Service of Documents

The Secretary will complile service lists from the entries of appearance filed in these investigations. Any party submitting a document in connection with these investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation(s). Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b), as amended by 47 FR 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written Submissions

Any person may submit to the Commission on or before November 18, 1983, a written statement of information pertinent to the subject matter of either or both of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on November 15, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact Mr. John MacHatton (202–523–0439), not later than 1:00 p.m., November 14, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

Copies of the petitions and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and part 201, subparts, A through E (19 CFR part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: October 28, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-29784 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-168]

Import Investigations; Certain Combination Punch Press and Laser Assemblies and Components Thereof; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: October 25, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-29775 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-169]

Import Investigations; Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Order No. 2

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: October 27, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-29778 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-145]

Import Investigation; Certain Rotary Wheel Printers; Commission Decision not to Review Initial Determination Designating This Investigation "More Complicated"

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has decided not to review Order No. 31, an initial determination granting a motion to designate this investigation "more complicated." Thus, the deadline for final Commission action in this case has been extended to October 20, 1984. The initial determination of the presiding officer must be certified to the Commission no later than June 20, 1984.

Authority: The authority for Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in sections 210.15 and 210.53(c), (h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, 48 FR 20225, May 5, 1983, and 48 FR 21115, May 11, 1983; to be codified at 19 CFR 210.15, 210.53(c), (h)).

SUPPLEMENTARY INFORMATION: On April 20, 1983, the Commission instituted inv. No. 337–TA–145, *Certain Rotary Wheel Printers*, on the basis of a complaint filed by Qume Corporation. (48 FR 16975.) The purpose of the investigation is to determine whether there is a violation of section 337 in the unauthorized importation and sale of certain rotary wheel printers by virtue of their alleged infringement of certain claims of U.S. Letters Patent 4,118,129. The notice of investigation was amended on July 27, 1983, to add five additional respondents. (48 FR 34149.)

On August 25, 1983, respondent Brother Industries, Ltd., filed a motion to designate the investigation "more complicated" within the meaning of section 337(b)(1) of the Tariff Act of 1930 and § 210.15 of the Commission's Rules of Practice and Procedure. (Motion No.145–37.) The presiding officer granted Motion No.145–37 on September 6, 1983. The presiding officer designated the investigation "more complicated" because of the complexity of the subject matter, the number of parties involved, and the difficulty in obtaining information. The Commission subsequently extended the deadline for deciding whether to review the initial determination, and remanded the initial determination to the presiding officer for additional findings and clarification. The presiding officer filed his supplemental findings with the Commission on October 17, 1983. Comments were filed by Silver Seiko Ltd. in support of the presiding officer's findings.

Copies of the initial determination, the additional findings, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington,D.C. 20436, telephone 202–523–1627.

Issued: October 27, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–29770 Filed 11–1–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–150]

Import Investigations; Certain Self-Stripping Electrical Tap Connectors; Commission Decision Not To Review Initial Determination Terminating Respondent Chieftain-Uniworld Corporation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 6) granting a joint motion (Motion No. 150–4) by complainant Minnesota Mining and Manufacturing Company (3M) and respondent Chieftain-Uniworld Corporation (Chieftain-Uniworld) to terminate Chieftain-Uniworld as a respondent in the above-captioned investigation on the basis of a settlement agreement.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On June 2, 1983, the Commission voted to institute investigation No. 337–TA–150, *Certain Self-Stripping Electrical Tap Connectors,* on the basis of a complaint filed by 3M. Notice of the investigation was publiched in the **Federal Register** on June 8, 1983. 48 FR 26542. The purpose of this investigation is to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain self-stripping electrical tap connectors into the United States, or in their sale, by reason of infringements of U.S. Letters Patent 3,388,370, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

On September 20, 1983, 3M and Chieftain-Uniworld filed a joint motion (Motion No. 150–4) to terminate Chieftain-Uniworld as a respondent in this investigation on the basis of a settlement agreement. On the same day 3M filed joint motions with two other respondents to terminate them from the investigation. Motion 150–4 was unopposed. The Commission investigative attorney filed a public interest statement and supported the motion. On September 28, 1983, the presiding officer issued an initial determination (Order No. 6) granting Motion No. 150–4 and terminating Chieftain-Uniworld as a respondent with prejudice.

A notice seeking comments on the proposed termination was published in the **Federal Register** on October 14, 1983. 48 FR 46867 (1983). No petitions for review or public or agency comments have been received.

Copies of the presiding officer's initial determination, the settlement agreements, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, Tel. 202–523–0079.

Issued: October 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–29782 Filed 11–1–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–150]

Import Investigations; Certain Self-Stripping Electrical Tap Connectors; Commission Decision Not To Review Initial Determination Terminating Respondent Blazer International Corporation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 4) granting a joint motion (Motion No. 150–2) by complainant Minnesota Mining and Manufacturing Company (3M) and respondent Blazer International Corporation (Blazer) to terminate Blazer as a respondent in the above-captioned investigation on the basis of a settlement agreement.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: On June 2, 1983, the Commission voted to institute investigation No. 337–TA–150, *Certain Self-Stripping Electrical Tap Connectors,* on the basis of a complaint filed by 3M. Notice of the investigation was published in the **Federal Register** on June 8, 1983, 48 FR 26542. The purpose of this investigation is to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain self-stripping electrical tap connectors into the United States, or in their sale, by reason of infringements of U.S. Letters Patent 3,388,370, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

On September 20, 1983, 3M and Blazer filed a joint motion (Motion No. 150–2) to terminate Blazer as a respondent in this investigation on the basis of a settlement agreement. On the same day

3M filed joint motions with two other respondents to terminate them from the investigation. Motion 150–2 was unopposed. The Commission investigative attorney filed a public interest statement and supported the motion. On September 28, 1983, the presiding officer issued an initial determination (Order No. 4) granting Motion No. 150–2 and terminating Blazer as a respondent with prejudice.

A notice seeking comments on the proposed termination was published in the **Federal Register** on October 14, 1983. 48 FR 46857 (1983). No petitions for review or public or agency comments have been received.

Copies of the presiding officer's initial determination, the settlement agreements, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, Tel. 202–523–0079.

Issued: October 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–29781 Filed 11–1–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–150]

Import Investigations; Certain Self-Stripping Electrical Tap Connectors; Commission Decision Not To Review Initial Determination Terminating Respondent Allison Corporation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 5) granting a joint motion (Motion No. 150–3) by complainant Minnesota Mining and Manufacturing Company (3M) and respondent Allison Corporation (Allison) to terminate Allison as a respondent in the above-captioned investigation on the basis of a settlement agreement.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On June 2, 1983, the Commission voted to institute investigation No. 337–TA–150, *Certain Self-Stripping Electrical Tap Connectors*, on the basis of a complaint filed by 3M. Notice of the investigation was published in the **Federal Register** on June 8, 1983. 48 FR 26542. The purpose of this investigation is to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain self-stripping electrical tap connectors into the United States, or in their sale, by reason of infringements of U.S. Letters Patent 3,388,370, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

On September 20, 1983, 3M and Allison filed a joint motion (Motion No. 150–3) to terminate Allison as a respondent in this investigation on the basis of a settlement agreement. On the same day 3M filed joint motions with two other respondents to terminate them from the investigation. Motion 150–3 was unopposed. The Commission investigative attorney filed a public interest statement and supported the motion. On September 28, 1983, the presiding officer issued an initial determination (Order No. 5) granting Motion No. 150–3 and terminating Allison as a respondent with prejudice.

A notice seeking comments on the proposed termination was published in the **Federal Register** on October 14, 1983. 48 FR 46867 (1983). No petitions for review or public or agency comments have been received.

Copies of the presiding officer's initial determination, the settlement agreements, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, Tel. 202–523–0079.

Issued: October 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 83–29781 Filed 11–1–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–167]

Import Investigations; Certain Single Handle Faucets; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: October 25, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83–29777 Filed 11–1–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–134 and 135 (Final)]

Color Television Receivers From the Republic of Korea and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

EFFECTIVE DATE: October 27, 1983.

SUMMARY: As a result of affirmative preliminary determinations by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from the Republic of Korea and Taiwan of color television receivers, complete or incomplete, provided for in items 685.11 and 685.14 of the Tariff Schedules of the United States are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigations Nos. 731–TA–134 and 135 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of such merchandise. Unless the investigations are extended, the Department of Commerce will make its final dumping determinations in the cases on or before December 23, 1983, and the Commission will make its final injury determinations by February 15, 1984 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy (202–523–1369), Office

of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

In June 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigations, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of allegedly LTFV imports of color television receivers from the Republic of Korea and Taiwan. The preliminary investigations were instituted in response to a petition filed on May 2, 1983, by counsel on behalf of the Industrial Union Department (AFL–CIO), the Independent Radionic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electrical, Radio and Machine Workers, and the Committee to Preserve American Color Television (COMPACT).

Participation in the investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), Not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report

A public version of the staff report containing preliminary findings of fact in these investigations will be placed in the public record on December 23, 1983, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on January 12, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 22, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on January 3, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 5, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 19, 1984.

Written submissions

As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 19, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary of the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subpart A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982) and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued October 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-29780 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-108 and 109 (Final)]

Portland Hydraulic Cement From Australia and Japan

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Australia and Japan of portland hydraulic cement, provided for in item 511.14 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective April 29, 1983, following preliminary determinations by the Department of Commerce that imports of portland hydraulic cement from Australia and Japan are being sold in the United States at LTFV.

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Washington, D.C., and by publishing the notice in the **Federal Register** on June 2, 1983 (48 FR 24799). The hearing was held in Los Angeles, Calif., on September 12, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on October 20, 1983. A public version of the Commission's report, Portland Hydraulic Cement from Australia and Japan (investigations Nos. 731-TA-108 and 109 (Final), USITC Publication 1440, 1983) contains the views of the Commission and information developed during the investigations.

Issued: October 20, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-29770 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

[332-161]

Cancellation of Hearing on Crude Petroleum

AGENCY: International Trade Commission.

ACTION: Cancellation of Hearing.

EFFECTIVE DATE: October 25, 1983.

Background

The Commission, on it own motion, instituted, effective April 20, 1983, investigation No. 332-161, under the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purposes of gathering and presenting information on the future supply and prices of crude petroleum. This information will be used in assessing the possible effects of changing crude petroleum prices on such areas as United States trade, the petroleum industry, the petrochemical industry, and other energy-intensive industries.

Public Hearing

A public hearing was scheduled to be held in Houston, Texas, beginning Nov. 1, 1983, in connection with the investigation. Because of the limited number of witnesses requesting an opportunity to testify, the Commission, on its own motion, cancelled the hearing.

Written Submission

In lieu of or in addition to appearance at the public hearing, interested persons were invited to submit written statements concerning the investigation, no later than Oct. 24, 1983. Because of the cancellation of the hearing, written submissions concerning the investigation will be received until November 14, 1983.

Notice of the institution of the investigation containing the date of the scheduled hearing was published in the **Federal Register** of April 27, 1983 (48 FR 19087); the date and site of the hearing was published July 20, 1983 (48 FR 33063).

Issued: October 25, 1983.

By the Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-29773 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

[332-170]

A Study on a Competitive Assessement of the U.S. Wood and Upholstered Household Furniture Industry

AGENCY: International Trade Commission.

ACTION: Following receipt, on October 3, 1983, of a letter from the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, the Commission, on its own motion, instituted investigation No. 332-170 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of gathering and presenting information on a competitive assessment of the U.S. wood and upholstered household furniture industry.

EFFECTIVE DATE: October 20, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Rhett Leverett, or Mr. Ruben Moller, General Manufactures Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-724-1725 or 202-724-1732, respectively.

Background

As requested by the Subcommittee, the Commission's study will specifically address:

(1) A profile of the U.S. and major foreign industries including both a descriptive view of the industry and an analysis of the various strengths and weaknesses of each industry in terms of such factors as raw material, capital, labor availability and cost, and technology level.

(2) An analysis of the key economic factors in the U.S. market including U.S. consumption, production, trade, and other relevant factors.

(3) A discussion of U.S. and foreign government policies and regulations and their influence on the wood and upholstered household furniture industry.

(4) An analysis of the conditions of competition in the U.S. market between domestic and foreign products including factors such as price, quality, marketing techniques, and after sales service.

Public Hearing

A public hearing in connection with the investigation will be held in High Point, North Carolina (exact location to be announced later), beginning at 10:00 a.m. e.s.t., on April 3, 1984, to be continued on April 4, 1984, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C., not later than noon, March 27, 1984.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by March 23, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules and Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

Issued: October 25, 1983.

By the Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-29774 Filed 11-1-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 446]

Alaska Railroad Certification

AGENCY: Interstate Commerce Commission.

ACTION: Certificate of Public Convenience and Necessity.

SUMMARY: Pursuant to the Alaska Railroad Transfer Act of 1982, the Commission is issuing a certificate of public convenience and necessity permitting the Alaska Railroad to be acquired by the State of Alaska and to be operated as a State-owned railroad. The certificate will become effective upon transfer of the Alaska Railroad from the United States to the State.

DATE: The decision is effective on November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer; (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 19, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-29699 Filed 11-1-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *ICC Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quailty of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: October 19, 1983.

By the Commission, Review Board Members Parker, Fortier, and Dowell.

Agatha L. Mergenovich,

Secretary.

MC-F-15484, filed October 4, 1983. BRAY FREIGHT SYSTEMS (BFS) (1703 Embarcadero Road, Palo Alto, CA 94303)—PURCHASE—BRAY LINES INCORPORATED (BLI) (P.O. Box 1191, 1401 North Little St., Cushing, OK 74023). Representatives: Joseph P. Ficurelli, 1703 Embarcadero Road, Palo Alto, CA 94303. Elliott Bunce, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. BFS, a non carrier, seeks authority to purchase all of the interstate operating rights and property of BLI. David P. Roush, David H. Roush, Brian Roush, and Gregory Roush, who control BFS seek authority to acquire control of the operating rights and property through the transaction. BFS is purchasing the interstate operating rights contained in Certificate No. MC-112822 and sub numbers thereunder, which authorize the transportation of general commodities and various specified commodities, such as food and related articles, chemicals and related articles, petroleum products, and metal products, between named points and facilities throughout the U.S. and between all points in the U.S. generally over irregular routes. Also, permit No. MC-112822 (Sub-Nos. 494 and 495) authorizing the transportation of general commodities (with exceptions) between points in the coterminous United States under continuing contracts with Kraft, Inc., and Phillips Petroleum Company. BFS holds no authority from this Commission. However, David P. Roush, majority stockholder of BFS, is in control of ROCOR International, a non-carrier holding company, which controls through stock ownership Altruk Freight Systems, Inc. (MC-116544), and Pacific Carriers (MC-157284). ROCOR also controls Western Freightways (MC-71459), pursuant to MC-F-12675. David P. Roush, David H. Roush, Brian Roush, and Gregory Roush control through stock ownership DonCo Carriers, Inc. (MC-138469).

Note.-(1) This notice does not purport to be a complete description of the operating rights of the carriers involved. (2) Application for temporary authority has been filed.

[FR Doc. 83-29702 Filed 11-1-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30295]

Rail Carriers; Norfolk and Western Railway Co.—Merger Exemption—Norfolk, Franklin and Danville Railway Co.; Notice of Exemption

Norfolk and Western Railway Company (NW) and its subsidiary Norfolk, Franklin and Danville Railway Company (NF&D) jointly filed an application for the proposed merger of NF&D into NW. In the alternative

applicants request that we consider the application as a Notice of Exemption under 49 CFR 1180.2(d)(3). The Railway Labor Executives' Association (RLEA) opposes the merger, and alternatively seeks the imposition of labor protective conditions if the applicants' request is granted.

NW owns all the stock of NF&D. Pursuant to a plan of merger, all stock of NF&D will be canceled and NF&D will be merged into NW. No monetary consideration will be involved. As part of NW's ongoing program of corporate simplification, the merger is designed to eliminate unnecessary or duplicative accounting and recordkeeping, provide a more streamlined corporate structure for the furnishing of transportation services, and achieve operating economies in an existing rail transport network. It will have no significant effect on intermodal or intramodal competition, nor will there be any lessening of competition, creation of a monopoly or restraint of trade, because NW already owns and controls NF&D. *Norfolk & W. Ry. Co.-Control-Norfolk, F. & D. Ry. Co.*, 320 I.C.C. 407 (1962).

This is a transaction within a corporate family and will not result in adverse changes in service levels, significant operational changes or a change in the competitive balance with carriers outside the corporate family. Therefore, the proposed transaction is of the type specifically exempted from the necessity for prior review and approval under 49 CFR 1180.2(d)(3). Since the Commission need not determine whether to approve the proposed transaction, RLEA's statement opposing approval of the transaction is inappropriate and will not be considered.

As a condition to use of the exemption, any employee of the NW or NF&D affected by this transaction shall be protected pursuant to the labor conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) regarding protection of employees affected by this transaction.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Decided: October 26, 1983.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-29700 Filed 11-1-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30315]

Rail Carriers; Vandalia Railroad Co.—Operation—Vandalia, IL; Modified Rail Certificate

October 25, 1983.

On October 17, 1983, Vandalia Railroad Company (VRC) filed an application for a certificate of public convenience and necessity under 49 U.S.C. 10901 for operation of a rail line at Vandalia, IL, embracing a petition under 49 U.S.C. 10505 for an immediate temporary exemption to provide service for IMCO Container Company located on the involved line pending the outcome of (VRC)'s application.[1] The considered line is that subsegment of the Illinois Central Gulf Railroad's (ICG's) former "Charter Mainline" between milepost 689.09 and ICG mileposts 692.54, a distance of 3.45 miles.

VRC's petition has been treated as a notice of request for a temporary modified rail certificate under 49 CFR Part 1150 (Subpart C) pending the outcome of its section 10901 application because (1) a state entity, the City of Vandalia, IL, has acquired the involved line formerly abandoned in No. AB-43 (Sub-No. 66), *Illinois Central Gulf Railroad Company, Abandonment in Christian, Fayette, Marion and Shelby Counties, Illinois* (not printed), served August 31, 1981,[2] and (2) the City of Vandalia and VRC have entered into a lease agreement requiring VRC to provide service over the considered line. Under 49 CFR 1150.22, when a state acquire an abandoned rail line and contracts with an operator to provide service over the line, the operator, in this case VRC, incurs a common carriers obligation but it nonetheless may be exempted from the requirements of 49 U.S.C. 10901 and 10903, providing that it applies for a modified certificate of public convenience and necessity. Issuance of this notice will permit VRC to operate over the line providing service for IMCO Container Company pursuant to its agreement with the City of Vandalia and pending the outcome of its section 10901 application.

This notice shall be served upon the Association of American Railroad (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

[1] VRC also requests an exemption under section 10505 from the securities issuance approval requirements of 49 U.S.C. 11301 which request is being handled in a separate decision.

[2] The State of Illinois, through its Department of Commerce and Community Affairs, awarded a grant of $271,650 to the City or Vandalia to purchase the involved rail line.

By the Commission, Heber P. Hardy Director, Office of Proceedings.

Agatha L. Mergenovich

Secretary

[FR Doc. 83-29701 Filed 11-1-83; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Establishment of Agency SES Performance Review Board and Names of Board Members

AGENCY: National Capital Planning Commission.

ACTION: Notice.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register.**

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Donald F. Bozarth, Robert E. Gresham, George H. F. Oberlander and Daniel H. Shear.

DATE: November 2, 1983.

FOR FURTHER INFORMATION CONTACT: Malcolm L. Trevor, Special Assistant for Administration to the Executive Director, National Capital Planning Commission, 1325 G Street, N.W., Suite 1007, Washington, D.C. 20576, (202) 724-0206

Daniel H. Shear,

Secretary.

October 28, 1983.

[FR Doc. 83-29769 Filed 11-1-83; 8:45 am]

BILLING CODE 7520-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following are those packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 CFR Ch. 35).

Subject: 703.2 Investment in loans to non-member credit unions—

This regulation requires the lending FCU to obtain certain financial information and determine that the negotiating person is authorized to make the loan.

Respondents: Federally Chartered Credit Unions.

Subject: 748.1—Security Program—NCUA 4501 and 9610.

Each federally insured credit union is required to file an annual certification of compliance with security requirements.

Respondents: Federally Insured Credit Unions.

Subject: 12 U.S.C. 1784—Continued Insurability Status Report.

Respondents: State Credit Union Supervisors.

Explanation: The Federal Credit Union Act contains provisions for NCUA to examine federally insured state chartered credit unions. Additionally, the Act provides that NCUA may accept the examination reports of the state credit unions' supervisory authorities to the extent feasible to determine continued insurability. State credit union regulators are requested to complete the NCUA 9653, Continued Insurability Status Report, during each examination of a federally insured state credit union. This form aids NCUA in determining continued insurability and reduces the need for NCUA to examine each credit union. The procedure reduces the cost and regulatory burden by eliminating duplicate examination procedures.

Subject: Areas of Non-compliance and Examiner's Comments Report (Federally-Insured State Credit Unions).

Respondents: State Credit Union Supervisors/Examiners.

Explanation: 12 SC 1784 permits NCUA to examine federally-insured state chartered credit unions. Statute also provides that NCUA may accept any report by a commission, Board or authority having supervision over state credit unions. State examiners complete form NCUA 9654 when they discover that a federally insured state credit union is not in compliance with regulatory requirements for continued insurability. This form aids compliance with regulatory requirements for continued insurability without NCUA having to examine each federally insured state credit union. This procedure reduces costs and regulatory burden by reducing duplicate examination effort.

Subject: 12 U.S.C. 1761—This statutory provision requires that a list of all Board and committee and all officers including addresses, be submitted to the NCUA Board within 10 days from the annual election.

Respondents: Federal Credit Unions.

Subject: Supervisory Committee Manual for Federal Credit Unions NCUA 8023.

This manual describes the standards, procedures and recordkeeping requirements for audits of Federal credit unions

Respondents: Federal Credit Unions.

Subject: 12 CFR Part 749—Records Preservation Program.

This regulation requires the offsite storage of records of members' share and loan balances and credit union financial reports to be used for records reconstruction in the event of destruction of the credit union's records.

Respondents: Federal Credit Unions.

Subject: 12 CFR Part 704 Management of Corporate Central Federal Credit Unions.

12 CFR Part 704 requires the board of directors of corporate credit unions to establish detailed written management policies which must be reviewed at least annually.

Respondents: Federal Corporate Central Credit Unions.

Subject: 12 CFR 701.36 FCU Ownership of Fixed Assets.

12 CFR 701.36 requires that credit unions with $2 million or more in assets obtain the approval of the Agency prior to investing in fixed assets in excess of 5% of total assets.

Respondents: Federal Credit Unions.

Subject: Federal Credit Union Act, Section 113 and Article II, Section 2 of the Federal Credit Union Bylaws.

Respondents: Federal Credit Unions.

Explanation: Article II, Section 2 of the Federal Credit Union Bylaws provides that persons must make application for membership in a Federal credit union and that the membership application will be acted upon by the Board of Directors, executive Committee, or a membership office. Section 113 of the Federal Credit Union Act. (12 U.S.C. 1761b) provides that the Board of Directors must furnish the written reasons for any denial of a membership application to the applicant upon his/her request.

Subject: Investigation Report, Report of Officials, and Management Report for new Federal credit unions.

Respondents: Applicants for Federal Credit Union Charters.

Explanation: Section 104 of the Federal Credit Union Act (12 U.S.C. 1754) requires investigating applications for new Federal credit union charters. A determination is to be made on: (1) Whether the organization certificate meets requirements, (2) the general character and fitness of the charter subscribers, and (3) the economic advisability of establishng the proposed Federal credit union. The forms covered by this request aid in making these determinations.

Subject: Federal Credit Union Bylaws, Article VII, Section 4.

Respondents: Federal Credit Unions.

Explanation: The Federal Credit Union Bylaws are incorporated by reference (§ 701.2) into the National Credit Union Administration Rules and Regulations. This section of the bylaws provides for a "recordkeeping requirement" as defined in 5 CFR 1320.7(R). The bylaw requires the chief executive officer of a Federal credit union board of directors to call a special meeting of the board upon the written request to do so signed by a majority of the directors then holding office.

Subject: Federal Credit Union Bylaws, Article VIII, Section 8.

Respondents: Federal Credit Unions.

Explanation: The Federal Credit Union Bylaws are incorporated by reference (§ 701.2) into the National Credit Union Administration Rules and Regulations. This section of the bylaws provides for a "recordkeeping requirement" as defined in 5 CFR 1320.7(R). This section requires the secretary to prepare and maintain minutes of meetings of the members and the board of directors, and to notify NCUA of any change of address of the credit union office or records. Section 113 of the Federal Credit Union Act requires a credit union's board of directors to meet at least once a month and requires that "minutes of all meetings shall be kept."

Subject: Federal Credit Union Bylaws; Article III, Sections 5 (c) and (d).

Respondents: Federal Credit Unions.

Explanation: The Federal Credit Union Bylaws are incorporated by reference (§ 701.2) into the National Credit Union Administration Rules and Regulations. These two sections of the bylaws provide for a "recordkeepng requirement" as defined in 5 CFR 1320.7(R). These sections require written approval of the credit committee or loan officer before a credit union member

may withdraw shares he/she pledged as security for a loan or before he/she may withdraw unpledged shares in the credit union if he/she is delinquent on a loan from the credit union or is cosigner, endorser or guarantor on a delinquent loan at the credit union.

Subject: Federal Credit Union Bylaws, Article XIX, Section 5.

Respondents: Federal Credit Unions.

Explanation: The Federal Credit Union Bylaws are incorporated by reference (§ 701.2) into the National Credit Union Administration Rules and Regulations. This section of the bylaws provides for a "recordkeepng requirement" as defined in 5 CFR 1320.7(R). The bylaw requires that each Federal credit union maintain on file a copy of its organization certificate, its bylaws and any amendments thereof, and any special authorizations by NCUA. The bylaws also requires that all returns of nominations and elections and proceedings of all regular and special meetings of the members and directors be recorded in minute books and that the minutes be signed.

Subject: Federal Credit Union Bylaws, Article IX, Section 1.

Respondents: Federal Credit Unions.

Explanation: The Federal Credit Union Bylaws are incorporated by reference (§ 701.2) into the National Credit Union Administration Rules and Regulations. This section of the bylaws provides for a "recordkeeping requirement" as defined in 5 CFR 1320.7(R). This section of the bylaws requires Federal credit unions to prepare and maintain on file a copy of the board of directors resolution increasing or decreasing the number of members of the credit committee.

Subject: Federal Credit Union Bylaws, Article X, Section 2.

Respondents: Federal Credit Unions.

Explanation: The Federal Credit Union Bylaws are incorporated by reference (§ 701.2) into the National Credit Union Administration Rules and Regulations. This section of the bylaws provides for a "recordkeeping requirement" as defined in 5 CFR 1320.7(R). This section of the bylaws requires the secretary of the credit union's supervisory committee to prepare, maintain, and have custody of full and correct records of all actions taken by the committee.

Subject: 12 CFR 702.3 Full and Fair Disclosure.

The regulation requires a credit union to fully and fairly disclose its financial condition to its members.

Respondents: Federal Credit Unions.

OMB Desk Officer: Judith McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the National Credit Union Administration, Special Projects Officer, on 202-357-1080.

Written commemts and recommendations for the listed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Judith McIntosh.

Dated: October 25, 1983.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 83-29735 Filed 11-1-83; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-321]

Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia, City of Dalton, Georgia; 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. DPR-57, issued to Georgia Power Company (GPC), Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1 (the facility), located in Appling County, Georgia.

The proposed amendment would revise the Hatch Unit 1 Technical Specifications to: (1) Accommodate the replacement of leaking fuel assemblies, and (2) extend the allowable fuel burnup limit from 30 gigawatt days per ton ($Gwd/_t$) to 40 $Gwd/_t$. The proposed amendment includes: (1) Numerical changes to four curves that specify maximum average planar linear heat generation rate (MAPLHGR) limits to specify allowable MAPLHGR limits for burnup beyond 30 $Gwd/_t$, (2) numerical changes to two curves that specifiy minimum critical power ratio (MCPR) limits, (3) modification of the nomenclature on two additional MAPLHGR curves to make them consistent with the nomenclature on the other MAPLHGR curves and the listing of an additional type of fuel assembly not previously used in Hatch 1 as being covered by one of these two curves, and (4) the addition of three new MAPLHGR curves that provide limiting values for three more additional types of fuel assemblies that have not been previously used in Hatch Unit 1. These four additional fuel assembly types may be used to replace the leaking fuel assemblies that have been removed from the Hatch Unit 1 core. All four additional fuel assembly types are 8X8 assemblies that have been previously irradiated in the Hatch Unit 2 core and that are available in the fuel storage pool. These changes are in accordance with the licensees' application for amendment dated September 29, 1983, as supplemented October 24, 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 accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different than those previously found acceptable at the facility in question (example ii). This amendment involves repalcement of leaking fuel assemblies. Such a replacement is similar in effect to a limited reload and while some of the fuel assemblies involved in this application are somewhat different from those previously authorized for Hatch Unit No. 1, i.e., some 8X8 repalcement assemblies have slightly different dimensions from the 8X8 assemblies currently authorized for use in Hatch Unit 1, the Commission proposes to determine that the application does not involve a significant hazards consideration since fuel elements of this design have been previously reviewed and approved for use in Hatch Unit No. 2. While there ae some differences between Hatch Unit No. 1 and Hatch Unit No. 2 operating characteristics which require a plant specific analysis for the use of the new fuel, these differences are not significant.

Another of the examples of actions likely to involve no significant hazards

considerations relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from application of a small refinement of a previously used calculational model or design method (example vi).

The NRC staff, in a letter dated February 3, 1982, informed GPC that it would accept General Electric positions that "credit for approved but unapplied Emergency Core Cooling System evaluation model changes be used to offset MAPLHGR penalties on operating reactors due to high burnup fission gas release." GPC has referenced its use of this credit in proposing MAPLHGR limits for fuel burnup in excess of 30 $Gwd/_t$ and has stated that the results of this proposed change meet the Emergency Core Cooling System criteria specified in 10 CFR 50.46 and 10 CFR Part 50, Appendix K. These are the criteria for acceptable accident analysis results specified by the Standard Review Plan. We conclude, therefore, that the proposed extension of MAPLHGR curves to fuel burnup beyond 30 $Gwd/_t$ fits example vi.

Still another of the examples of actions likely to involve no significant hazards considerations relates to 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 (example i). The modification of the nomenclature on two curves fits this example. Accordingly, the Commission proposes to determine that these changes do not involve a 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 December 2, 1983, the licensees 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, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner 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 John F. Stolz: 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 G.F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20006, attorney for the licensees.

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. 20555, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland this 27th day of October 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-29747 Filed 11-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Company; Middle South Energy, Inc.; South Mississippi Electric Power Association; 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-13, issued to Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would provide changes to the Technical Specifications in accordance with the licensees' applications for amendment dated June 23, 1983, and September 12, 1983. These changes to the Technical Specifications involve the following sections:

(a) 4.3.4.2.3: Postpones the surveillance test for breaker arc suppression time until first refueling outage (June 23, 1983), and

(b) Table 3.3.6–2 and 4.3.7.6: Lowers the minimum allowable countrate for Source Range Monitor (SRM) Operability (September 12, 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 proposed changes to the Technical Specifications were proposed to achieve consistency with the as-built condition of the plant and with Regulatory guidance given in the Standard Review Plan as applied for other operating BWRs. The proposed changes for the breaker arc suppression time: (a) Would recognize the test time determined by the manufacturer until a suitable test procedure and appropriate Technical Specifications are established prior to the first refueling outage. As currently written, the Technical Specifications would require verification of an arc suppression time of 50 ms while the manufacturer has determined by test that the actual arc suppression time for the Grand Gulf breaker is 12 ms. The current Technical Specifications incorrectly incorporate other parameters into the specified time value. The required total system response time of <190 ms in Table 3.3.4.2–3 remains unchanged. Thus, there is no affect on the accident analysis involving this system. The proposed changes for the Source Range Monitor (b) would lower the minimum allowable countrate from 3 cps to 0.7 cps. Regulatory Guide 1.68, Revision 2, as referenced in Chapter 14 of the Standard Review Plan, states that a neutron countrate of at least 0.5 cps should register on the startup channels prior to startup and the signal-to-noise level should be known to be greater than 2. The licensee has proposed an allowable countrate value of 0.7 and states that the SRM instrumentation sensitivity provides a signal-to-noise level of at least 5. The licensee further states that a NSSS analysis supporting a value of 0.3 cps would be valid for Grand Gulf.

The Commission has made a proposed determination that the amendment requests involve 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 Commission has provided guidance for the application of these criteria by providing examples of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870). Examples of amendments which will likely be found to involve no significant hazards consideration are listed as follows:

(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.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Proposed changes (a) and (b) fall within examples (i) and (vi), respectively, as given above, for amendments which will likely be found to involve no significant hazards consideration. Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment requests involve 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 December 2, 1983, the licensees 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 amendment petition must satisfy the specificity requirements described above.

Not later than fifteen (15) day 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 basis 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 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 requests involve 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 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. 20555, 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 Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006, attorney for the licensees.

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 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 applications for amendment which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 27th day of October 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-29746 Filed 11-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Company; South Carolina Public Service Authority; 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-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees), for operation of the Virgil C. Summer Nuclear Station, Unit 1, located in Fairfield County, South Carolina.

The amendment would correct an error in the calculations for the predicted hoop tendon base values listed in Technical Specification Tables 4.6–1a and 4.6–1b. The error involved incorrect recording of the ultimate specific creep constant. The error caused the base value for each hoop tendon listed to be from 0 to 7 Kips (<1%) too high. Because the values were too high in Tables 4.6–1a and 406–1b,

and therefore more conservative, previous testing results are still acceptable. Four tendon surveillance substitutions would also be made. In order to make the surveillance more random, tendons D-219 (listed twice) and 36AC would be changed because they were checked during the first surveillance conducted prior to startup. Tendon D-312 would be changed because of a physical interference problem which makes inspection impossible. This amendment was requested in the licensees' application for amendment dated July 22, 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 Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of these examples relates to a change which may reduce a safety margin in some way, but were the results of the change are clearly within all acceptable criteria with respect to the component specified in the Standard Review Plan. The amendment involved here is similar, because it results from correction of a small error (<1%) in the calculations and changes some Tendons listed for surveillance to make the surveillance more random. Accordingly, the Commission proposes to determine that this change does not involve a 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 December 2, 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, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final detemination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner 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 Elinor G. Adensam: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Randolph R. Mahan, P.O. Box 764, Columbia, South Carolina 29218, 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. The 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 Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29218.

Dated at Bethesda, Maryland, this 26th day of October 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-29749 Filed 11-1-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35):

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 71—Packaging and Transportation of Radioactive Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. Who will be required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. An estimate of the number of responses: 685.

7. An estimate of the total number of hours needed to complete the requirement or request: 73,417.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR Part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of type A quantities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott (301) 492-8585.

Dated at Bethesda, Maryland, this 28th day of October 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-29750 Filed 11-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Emergency Planning Proceeding; Amended Notice of Hearing

October 27, 1983.

Please take notice that the hearing in this proceeding will commence on Tuesday, December 6, 1983 at 9:00 a.m. in the "Auditorium," Suffolk County Legislative Building, County Center, Veterans Memorial Highway, Hauppauge, New York. The hearing will continue at that location through Friday, December 9, 1983.

The hearing will reconvene at 10:30 a.m. on Monday, December 12, 1983, in the Riverhead Legislative Meeting Room, Office of County Legislative, County Center, Riverhead, New York, and will adjourn on Friday, December 16.

On Tuesday, January 3, 1984, the hearing will reconvene at the Hauppauge location at 10:00 a.m.

Atomic Safety and Licensing Board.

James A. Laurenson,

Chairman, Administrative Law Judge.

[FR Doc. 83-29751 Filed 11-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142 OL]

The Regents of the University of California (UCLA Research Reactor); Proposed Renewal of Facility License; Resumption of Evidentiary Hearing

October 27, 1983.

Please take notice that the evidentiary hearing in the above-captioned matter will resume on Tuesday, November 29, 1983 at 9:30 a.m. local time at the Federal Trade Commission, Los Angeles Regional Office, Suite 13209, 11000 Wilshire Boulevard, Los Angeles, California 90024. The hearing will continue at the same location, commencing at 9:30 a.m. each day through December 2, 1983.

For the Atomic Safety and Licensing Board.

John H. Frye III,

Chairman, Administrative Judge.

[FR Doc. 83-29752 Filed 11-1-83; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on November 17-19, 1983 in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on September 15, 1983 and October 26, 1983.

The agenda for the subject meeting will be as follows:

Thursday, November 17, 1983

8:30 a.m.-8:45 am.: Opening Remarks (Open)—The ACRS Chairman will report briefly on matters of current interest regarding ACRS activities.

8:45 a.m.–11:45 a.m.: R. E. Ginna Nuclear Power Plant (Open)—The Committee will hear and discuss reports from its subcommittee and from representatives of the NRC Staff and the licensee regarding the request for a full term operating license for this plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

11:45 a.m.–12:30 p.m.: Discuss Topics for Meeting with NRC Commissioners (Open)—The Committee members will discuss ACRS comments with respect to topics to be discussed with the NRC Commissioners including consideration of seismic design margins in nuclear power plants and proposed use of an NTSB-type board to investigate nuclear power plant accidents.

1:30 p.m.–3:30 p.m.: Meeting with NRC Commissioners (Open)—The Committee will meet with members of the Commission to discuss topics noted above.

3:30 p.m.–5:00 p.m.: Standards for Protection Against Radiation (Open)—The Committee members will hear and discuss reports from its Subcommittee, and from representatives of the NRC Staff and invited experts regarding proposed changes to NRC regulation 10 CFR Part 20, Standards for Protection Against Radiation.

5:00 p.m.–6:00 p.m.: Containment Hydrodynamic Loads (Open)—The Committee members will hear and discuss reports from its subcommittee and representatives of the regulatory staff regarding the proposed NRC Staff position for resolution of hydrodynamic loads in Mark III—type containments.

Friday, November 18, 1983

8:30 a.m.–8:45 a.m.: Anticipated ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for ACRS consideration.

8:45 a.m.–9:15 a.m.: NRC Severe Accident Policy (Open)—The Committee will hear and discuss a status report regarding NRC Staff activities related to development of a decisionmaking process to consider servere accidents in the NRC licensing process, including related safety research activities.

9:15 a.m.–12:30 p.m. and 1:30 p.m. and 3:15 p.m.: Big Rock Point Nuclear Plant (Open)—The members will hear and discuss reports of its subcommittee and representatives of the NRC Staff and the licensee regarding the IPSAR for this project.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

3:15 p.m.–4:15 p.m.: BWR Primary System Integrity (Open)—The Committee members will hear and discuss a report from representatives of the NRC Staff regarding the status of NRC activities related to cracking in BWR primary system piping.

4:15 p.m.–4:45 p.m.: Systems Interactions (Open)—The members will meet with representatives of the NRC Staff and discuss proposed NRC Staff activities regarding consideration of systems interactions in the licensing review of nuclear power plants and the generic resolution of this issue.

4:45 p.m.–5:30 p.m.: Activities of Office for Analysis and Evaluation of Operational Data (Open)—The Committee members will hear and discuss a report by the NRC Director, Office for Analysis and Evaluation of Operational Data.

5:30 p.m.–6:30 p.m.: NRC Safety Research Program Related to Probabilistic Risk Assessment (Open)—The ACRS members will hear and discuss the report of the ACRS Subcommittee regarding ACRS response to a General Accounting Office inquiry regarding selected NRC programs related to probabilistic risk assessment. Representatives of the NRC Staff will participate as appropriate.

Saturday, November 19, 1983

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The ACRS members will discuss proposed reports to the NRC and GAO regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information and Information involved in an adjudicatory proceeding.

1:30 p.m.–1:45 p.m.: ACRS Subcommittee Report (Closed)—The members will hear and discuss the report of its Subcommittee regarding qualification of candidates proposed for appointment to the Committee.

This session will be closed to discuss information that would clearly represent an unwarranted invasion of personal privacy.

1:45 p.m.–2:45 p.m.: Use of Statistics (Open)—The members will hear a briefing from a member of the Committee regarding use of statistics in evaluation of nuclear plant safety.

2:45 p.m.–3:15 p.m.: ACRS Subcommittee Activity (Open/Closed)—The members will hear and discuss reports of ACRS subcommittee activity including proposed changes in ACRS procedures consistent with 41 CFR Part 101–6, qualifications of candidates proposed for ACRS membership, proposed changes in NRC Regulatory Guides (R.G. 1.105, Instrument Setpoints) and nomination of ACRS Officers for CY–1984.

Portions of this session will be closed to discuss information that would constitute a clearly unwarranted invasion of personal privacy and relate solely to the internal personnel rules and practices of the agency.

3:15 p.m.–4:00 p.m.: Completion of Meeting Items—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1982 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C 552b(c)(4)), information related solely to the internal pesonnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and information involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS

Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:45 a.m. and 5:00 p.m. est.

October 31, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-29833 Filed 11-1-83; 10:12 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by Section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the following three sets of rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations) through three separate Federal agencies. These rates have been established in accordance with the requirements of OMB Circular A-25, requiring reimbursement for full cost of all services provided. This has been determined as follows:

(a) For the Department of Defense—historical costs and workload data provided through the Uniform Chart of Accounts (UCA) reporting system provides an operating cost base to which are added systemwide costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. The costs added are those items required by OMB Circular A-25: (a) retirement for military personnel—26.5% of the pay of the military personnel; (b) retirement for civilian personnel—13.4% of the pay of the civilian personnel; (c) an asset charge of 4% of the other costs in lieu of a specific depreciation cost on fixed assets; and (d) a 3% surcharge for the cost to DOD of administering the medical care program.

(b) For the Veterans Administration—the actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage increase to arrive at the estimated rates for the fiscal year under review.

(c) For the Department of Health and Human Services—the sum of obligations for providing medical services is broken down into amounts attributable to inpatient and outpatient care on the basis of the proportion of staff devoted to each. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visits) to produce the inpatient and outpatient rates. The data are based on obligations and statistical reports for FY 1982.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics, administered by any of the three Federal agencies—Department of Defense, Veterans Administration or Department of Health and Human Services.

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be the amounts expended by the United States for such care and treatment.

	Effective Nov. 1, 1983 and thereafter		
	DOD	VA	HHS
Hospital care per inpatient day:			
General medical, surgical, and tuberculosis care	$391	$319	$282
Psychiatric care		195	210
Nursing home care		126	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, Texas	1,610		
Outpatient medical and dental treatment: Per outpatient visit	49	71	55

For the period beginning November 1, 1983, the rates prescribed herein supersede those established by the Director of the Office of Management and Budget on December 15, 1982 (47 FR 55743).

Dated: October 28, 1983.

David A. Stockman,

Director, Office of Management and Budget.

[FR Doc. 83-29720 Filed 11-1-83; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Office—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.

Amendment

Guide 1 of the Securities Act Industry Guides

Guide 1 of the Exchange Act Industry Guides No. 270-280

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 clearance a proposed amendment to Securities Act Industry Guide 1 and Exchange Act Industry Guide 1 dealing with disclosure of principal sources of revenues by electric and gas utilities.

The amendments are being proposed in response to a rulemaking petition filed by the California Association of Utility Shareholders.

Submit comments to OMB Desk Officer: Robert Veeder, (202) 395-4814

By the Commission.

Dated: October 26, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-29694 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13600; 812-5640]

First Investors Tax Exempt Fund, Inc.; Filing of Application

October 27, 1983.

Notice is hereby given that First Investors Tax Exempt Fund, Inc. ("Applicant"), 120 Wall Street, New York, NY, 10005, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 26, 1983, for an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 22(d) of the Act to permit holders of units of Investor's Quality Tax-Exempt Trust ("Trust") to invest their distributions of interest income, capital gains or principal in shares of Applicant at net asset value plus a reduced sales charge. 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 for the text of applicable sections.

According the application Applicant is an open-end, diversified management investment company currently engaged in continuous offerings of its shares to the public through First Investors Corporation and First Investors Management Company, Inc. First Investors Management Company, Inc., serves as Applicant's investment advisor. Applicant's shares are sold at net asset value plus a sales charge which ranges from 7.25% to 1.25%. Applicant states that those sales charges are described in its current prospectus.

Applicant states that its investment objective is to provide a high level of tax-exempt investment income by investing in a diversified, managed portfolio of debt obligations the interest on which is exempt from federal income tax, and the principal and interest payments on which are insured by an independent insurance company. The Trust is a series company comprised of separate but similar unit investment trusts that invest in tax-free interest bearing obligations. Van Kampen, Filkin & Merritt, Inc., a broker-dealer registered under the Securities Exchange Act of 1934, is sponsor for the Trust and Bradford Trust Company ("Trustee") is the trustee.

Applicant requests an order to permit holders of past and future series of the Trust to reinvest their semi-annual, quarterly, or monthly distributions of interest income, capital gains or principal in shares of Applicant at net asset value plus a sales charge of 0.4%, a purchase price which is less than the current public offering price described in Applicant's prospectus. According to the application, all unitholders will be eligible to participate in the reinvestment program but will be required to reinvest the entire amount of their semi-annual, quarterly or monthly distributions from any series of the Trust.

Applicant states that First Investor's Management Company, Inc., will retain the 0.4% sales charge and will bear the expenses of offering the reinvestment program to unitholders of the Trust. Separate accounts for each unitholder who reinvests his distributions will be maintained by Administrative Data Management Corporation and confirmations of the transactions will be mailed to unitholders. Applicant represents that notice of the availability of the reinvestment program will be given in all future prospectuses of the Trust and existing shareholders will be notified of the reinvestment privilege and of the means to indicate interest in the program. Applicant also states that each unitholder may request a current prospectus from the Trustee before participating in the reinvestment program.

According to the application, a unitholder who has elected to participate in the reinvestment program, will be entitled to all rights of any shareholder of Applicant, but will not be entitled to reduced sales charges for quantity purchases of shares or the right to exchange shares of Applicant for shares of other funds managed by First Investors Management Company, Inc. Applicant states that any participant in the reinvestment program wishing to purchase additional shares of Applicant outside of the reinvestment program will be required to meet Applicant's minimum investment requirements, which prescribe a minimum initial investment of $2,000 and a minimum of $500 for any subsequent investment.

Applicant states that on each distribution date of the Trust or immediately thereafter, the Trustee will forward money representing distributions of interest income, capital gains or principal of participating unitholders to First Investors Corporation, who will purchase shares of Applicant for each participant at the net asset value per share next determined after receipt of the purchase order, plus the sales charge of 0.4%. According to the application, a participant may elect to terminate his participation in the reinvestment program and receive future distributions on his units in cash by notifying the Trustee in writing five days before the next distribution date.

Applicant represents that the proposed reinvestment of Trust distributions into Fund shares would not lead to a diminution of assets of the investment company of the equity position of existing shareholders. Applicant asserts that its shareholders will benefit from an increase in cash flow which will enable it to meet redemptions without liquidating portfolio investments and to diversify further its securities holdings.

Applicants argues that sales costs will be less for shares purchased in the reinvestment program than shares not purchased in the reinvestment program for which commissions to sales representatives must be paid and other costs incurred in connection with a public solicitation. Applicant believes that the savings resulting from those reduced costs should be passed on to investors in the form of a lower sales charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 21, 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 service (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. 83-29085 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13594; 812-5556]

Management of Managers Equity Fund et al.; Application

Notice of Application for an order pursuant to Section 6(c) of the Act for exemption from certain provisions of Section 15(a) of the Act; and from certain requirements set forth in Rules 20a-2(a)(1), 20a-2(b)(1), 20a-2(a)(8), 20a-2(a)(9), and 20a-2(b)(4) under the Act, Items 13(a)(5), 13(a)(6), and 13(d)(3) of Form N-1, and subparagraphs (a), (g), and (h) of Item 20 of Form N-1R under the Act, and from Rules 6-07.2 (a) and (c) of Regulation S-X; and for an order pursuant to Sections 6(c) and 17(b) of the Act exempting applicants from Sections 12(d)(1), 17(a)(1) and (2), and 17(d) of the Act and Rules 17d-1 thereunder.

Notice is hereby given that Management of Managers Equity Fund, Management of Managers Special Equity fund, Management of Managers Income Equity Fund, Management of Managers Intermediate Fixed Income Fund, Management of Managers Money Market Fund, Management of Managers Municipal Bond Fund, Management of Managers Short Term Municipal Bond Fund (the "Funds"), and Evaluation Associates Investment Management Co. ("Manager") (together with the Funds, the "Applicants") 25 Sylvan Road South, Westport, Connecticut, 06880 filed an application on May 25, 1983, and an

amendment thereto on September 26, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants (and similarly organized, substantially identically situated investment companies) from certain provisions of Section 15(a) of the Act; and from requirements set forth in Rules 20a-2(a)(1), 20a-2(b)(1), 20a-2(a)(8), 20a-2(a)(9), and 20a.2(b)(4) under the Act, Items 13(a)(5), 13(a)(6), and 13(d)(3) of Form N-1, and subparagraphs (a), (g), and (h) of Item 20 of Form N-1R under the Act, and from Rules 6-07.2 (a) and (c) of Regulation S-X; and for an order pursuant to Sections 6(c) and 17(b) of the Act exempting Applicants from Sections 12(d)(1), 17 (a) (1) and (2), and 17(d) of the Act and Rule 17d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and are referred to the Act and rules thereunder for information as to the provisions to which the exemptions apply.

Recently organized by the Manager, the Funds are open-end, diversified, management investment companies that enable the Manager to provide asset management consulting services to investors on a commingled basis. The Manager, a registered investment adviser, will enter into agreements ("Fund Management Agreements") with the Funds whereby the Manager will provide consulting, investment, and administrative services to the Funds. The Fund Management Agreements, which will be approved by the Funds' shareholder and the boards of trustees, stipulate that the Manager, subject to the management and direction of the Funds' boards of trustees and officers, will evaluate, select, and monitor the various sub-advisers ("Portfolio Managers") who make the specific security investments for each Fund. The Funds and the Manager will enter into advisory contracts ("Portfolio Management Agreements") with the Portfolio Managers. The Manager will allocate assets to Portfolio Managers and will define investment strategies to be used by a Portfolio Manger for the portion of an Applicant's portfolio assigned to that Portfolio Manager. Each Portfolio Manager will be an "investment adviser" as defined by Section 2(a)(20) of the Act, and will have discretionary authority to invest assets from a particular Fund. The Manager and the Funds will enter into consulting agreements with Evaluation Associates, Inc. ("EAI") pursuant to which EAI will provide advice regarding asset allocation, investment objectives, long-term rates of return, and risk levels. EAI, a registered investment adviser, will also research and recommend potential Portfolio Managers, and monitor and report on existing Portfolio Managers.

The Funds will offer their shares only to institutions and individuals who have entered into agreements ("Asset Management Consulting Agreements") with the Manager pursuant to which the Manager will assist the investor in defining appropriate investment objectives and in allocating its assets among different investment media. The Asset Management Agreement will also provide for the payment of fees by the investor to the Manager based upon the services rendered and the amount of the investor's assets managed by Applicants. The Manager will negotiate with each investor the fee to be paid to the Manager. The Manager will be compensated by its investors, pursuant to the provisions of the Asset Management Consulting Agreements, for all services it provides to the funds. The Funds will pay no "investment advisory" or "management" fee to either the Manager or the Portfolio Managers. The fee an investor pays to the Manager will include the compensation that the Manager will pay to the Portfolio Managers, as well as the Manager's compensation for consulting services. Applicants contend that the maximum fees to be paid by any investor compare reasonably with the aggregate expense to an investor of obtaining the complete set of services elsewhere, assuming an investor could even obtain all of the services elsewhere.

The Manager believes that its market for investors consists of institutions such as bank trust departments, employee welfare plans, charitable foundations, endowment funds, and employee pension and profit-sharing plans. Applicants assert that such institutional investors will have sufficient assets to bear the proposed fees (EAI has a minimum base fee of $50,000 per year for consulting services for new clients) and generate sufficient revenues for the Manager to provide services on a profitable basis. The Manager has not adopted minimum asset size requirements, but the costs of providing services to an investor effectively limit to a substantial degree the institutions the Manager can serve. The Manager does not intend to undertake any "retail" marketing efforts aimed at soliciting direct investment by individuals in the Funds. Applicants will consider accepting individual investors when there is no financial intermediary located in the geographical vicinity of the potential individual investor that has already entered into an Asset Management Consulting Agreement with the Manager. The Manager would analyze the size of the potential investment by the individual investor, the scope of services required by the individual, the cost of such services, and the additional burdens required to service an individual in a program designed for institutional investors. The Manager would determine, as a matter of business judgment, whether the individual's investment would be accepted. Should a financial intermediary located in the geographical area of the individual investor subsequently enter into an Asset Management Consulting Agreement with the Manager, the individual investor would be advised to transfer his direct investment in the Applicants to an indirect investment through the financial intermediary.

The Funds' Fund Management Agreements with the Manager will be approved by the Funds' shareholders and by the Funds' board of trustees, including a majority of the trustees who are not "interested persons" of the Funds or the Manager, at the times and in the manner required by the Act and the rules thereunder. These trustees recognize that the Manager has a fiduciary duty with respect to the receipt of compensation for services attributable to the Funds, and they will evaluate information concerning: The fees charged by the Manager to investors who have contracted with it, the fees paid by the Manager to the Portfolio Manager, and any reduction in fees that the Manager obtains from the Portfolio Managers. Such information will be maintained by the Funds, pursuant to Rule 31a-2(a)(1), and will be available to the Commission in the manner authorized by the Act.

Applicants request exemption from Section 15(a) of the Act to permit the Funds to enter into, and Portfolio Managers to act pursuant to, advisory contracts without prior approval by a majority of the outstanding voting securities of the Funds, and to permit the Funds and a Portfolio Manager to enter into and act pursuant to a new Portfolio Management Agreement—not withstanding a change of control of the Portfolio Manager—without shareholder approval. Applicants also seek exemption from Section 15(a) to permit the Funds and the Portfolio Managers to enter into written contracts which do not provide for termination by shareholders. As a condition to the requested exemptions, the Funds'

boards of trustees, including a majority of the disinterested trustees, shall discharge their duties and responsibilities imposed by Section 15(c) of the Act, prior to the entry into a new or amended contract, or prior to the entry into a new contract following a change of control resulting in an assignment of a contract. Additionally, the Funds shall mail written notice of the employment of a new Portfolio Manager, or entry into a new advisory contract as a result of an assignment, to each shareholder of record of the Fund for which the Portfolio Manager has been engaged, as promptly as practical under the circumstances. But for the shareholder approval provisions of Sections 15(a) (2) and (3), Applicants intend to comply with Section 15(a).

In support of their request for exemption from Section 15(a), Applicants assert that they are distinctly different investment vehicles from the conventional investment company or investment company complex and that shareholder approval requirements are not necessary and may be harmful to their shareholders' best interests. Applicants contend that, while investors in conventional investment companies must evaluate their funds' investment advisers, investors in the Funds have chosen to have the Manager select their investment advisers. Applicants assert that their investors will have decided to employ the Manager on terms established between the Manager and the investor, and to rely upon the Manager to select specific advisers for the various segments of the Funds' Portfolios. Unlike the shareholders in the conventional investment company, the Funds' shareholders are independent of their Portfolio Manager, whose sole function is to invest all or a portion of a Fund's assets in specific securities. Applicants claim that the Funds' investors are indifferent as to the identity of the specific Portfolio Managers. The Funds' shareholders are protected because they control, through shareholder approval of the Fund Management Agreements, the Manager's relationship with the Funds. Applicants contend that shareholder approval of the Portfolio Management Agreements is unnecessary, expensive, and would delay the prompt implementation of the most desirable course of action.

Applicants assert that complete compliance with Section 15(a), given their unconventional structure and their investors' reasons for investing in them, would result in expenses to their shareholders that provide them no benefits when they employ additional Portfolio Managers. The potentially adverse consequences of a delay resulting from the shareholder approval process might be even more significant. The Funds assert that their best interests are served if they can immediately, subject to review and approval by their boards of trustees, employ new Portfolio Managers. Given the Funds' operating mode and their investors' reasons for investing in the Funds, a delay would, arguably, provide no meaningful benefit to the Funds' investors and could be detrimental. The Funds agree to notify their shareholders, as promptly as possible under the circumstances, of any event that would, but for the requested exemptions, have required shareholder approval.

Applicants request relief from various disclosure provisions under the Act and Regulation S–X requiring disclosure of advisory fees paid to the Portfolio Manager. Each investor that becomes a client of the Manager will enter into an Asset Management Consulting Agreement with the Manager which will set forth the fee to be paid by the investor to the Manager. This fee will be negotiated individually with each investor and will reflect not only the specific services provided to an investor, but also the costs and expenses (including the Portfolio Managers' compensation) to the Manager of managing the Funds' business. Each investor will know in advance the total fees it will bear, and will be able, arguably, to determine whether the total package of services is priced reasonably in relation to the services the investor could obtain elsewhere. Applicants contend that the investor does not need to know the fees of various persons or entities providing services to the Manager. The provisions from which Applicants seek exemptive relief in this respect are: Rule 20a–2(a)(1) and, under certain circumstances, Rule 20a–2(b)(1), which both require disclosure of advisory fees in Applicants' proxy statements; and Rule 20a–2(b)(4), which provides that any registered investment company seeking shareholder approval of its advisory contract must include the rate of its adviser's compensation in its proxy statement. Applicants seek relief from Items 13(a) (5) and (6), and 13(d)(3) of the Form N–1 registration statement under the Act and the Securities Act of 1933, which require disclosure of the advisory fee paid by Applicants, and from Items 20 (a), (g), and (h) of the Form N–1R Annual Report under the Act, which also require such disclosure. Applicants seek relief from Rules 6–07.2 (a) and (c) of Regulation S–X, which require that Applicants' statements of operations and related footnotes contain information concerning fees paid to the Portfolio Managers, the nature of the Portfolio Managers' affiliations with the Manager, and the names of any Portfolio Manager accounting for 5 percent or more of the Portfolio Managers' aggregate fees.

Exemption from the various disclosure provisions regarding advisers' fees could benefit the Funds' investors by reducing the total costs charged by the Manager. The Manager believes that in many instances it will be able to secure lower fee rates from Portfolio Managers if those rates are not publicly disclosed. If, however, the Portfolio Managers' fees must be publicly disclosed, the Manager believes that some Portfolio Managers will not deviate from their "posted" fee rates. To the extent the Manager can negotiate reduced fees from the Portfolio Managers, the Manager can lower its fees to investors. Each investor will benefit from these fee reductions because each investor will have negotiated a fee with the Manager which reflects, among other expenses, the Portfolio Manager's fee. Applicants contend that disclosure of such fees provides no meaningful information to an investor because investors with substantially less assets than the Funds would not be able to obtain such rates for themselves.

Applicants seek relief from certain other proxy statement disclosure requirements. The Funds seek relief from Rule 20a–2(a)(8) to permit them to omit from their proxy statements information concerning transactions in securities issued by the Portfolio Managers (or their parents) to the extent such transactions are effected by the principal executive officer, any director or general partner, or any parent of the Portfolio Managers. Applicant seek relief from Rule 20a–2(a)(9) to permit the Funds to omit from their proxy statements, to the extent required by that rule, the Portfolio Managers' balance sheets. Applicants assert that compliance with Rule 20a–2(a)(8) is unnecessary because no director, officer, or employee of the Applicants knowingly has or will have any direct or indirect beneficial interest in any security issued by a Portfolio Manager (or a controlling person of a Portfolio Manager) or stands to profit or benefit in any manner from transactions in the Portfolio Manager's securities. Applicants conclude that disclosures concerning transactions of numerous Portfolio Managers unrelated in any manner to the Applicants other than as Portfolio Managers provides no

necessary, appropriate, or meaningful investor protection. Moreover, making the inquiries and gathering the information required to respond to this rule would impose substantial administrative burdens and expenses upon Applicants while providing no meaningful corresponding benefits to investors. Applicants argue that compliance with Rule 20a–2(a)(9) would provide the Funds' shareholders with information of very limited relevance due to Applicants' unconventional structure. Because Applicants are not dependent upon their Portfolio Managers for any of their ongoing administrative requirements, a Portfolio Manager's financial condition (and hence its balance sheet) is not as important to the Funds' shareholders as in the conventional investment company context. Applicants assert that obtaining balance sheets from the numerous Portfolio Managers will impose significant administrative burdens and expenses upon Applicants (and possibly the Portfolio Managers) and would produce no benefit to the Funds' investors which justifies such costs.

Applicants request exemption, pursuant to Sections 6(c) and 17(b) of the Act, from Sections 12(d)(1), 17(a) (1) and (2), and 17(d) of the Act, and Rule 17d–1 thereunder, to permit the "Money Market Fund" (one of the "Funds") to sell and redeem its shares from the other "Funds". Because the Money Market Fund may be deemed an affiliated person of each of the other Funds, the issuance by Money Market Fund of its shares to the other Funds may be deemed a sale to a registered investment company by an affiliated person of such company in violation of section 17(a)(1) of the Act. Conversely, the redemption by Money Market Fund of its shares may be deemed a purchase by Money Market Fund, as an affiliated person of a registered investment company, in violation of Section 17(a)(2).

The Money Market Fund invests solely in short-term, money market instruments. It intends to use the amortized cost method to value its portfolio securities. Applicants designed the Money Market Fund as a repository and very short-term investment vehicle for investors' monies destined for one of the other Funds, and as a means for investing the cash reserves of the other Funds. The other Funds expect to have cash reserves emanating from a variety of sources, including dividends or interest received on portfolio securities, unsettled or "failed" securities transactions, reserves held for investment strategy purposes, cash arising from the liquidation of investment securities to meet anticipated redemptions and cash dividend payments, and from new monies received from investors. Because the other Funds offer their shares for sale only twice a month, cash reserves arising from new monies may exceed those arising in the conventional investment company context. Although an investor can be a shareholder of the Money Market Fund without being a shareholder of any of the other Funds, and *vice versa*, over time it can be expected that there will be a significant similarity between shareholders of the Money Market Fund and the other Funds.

The Funds' custodian and transfer agent, which also serves as the sole Portfolio Manager of the Money Market Fund, (State Street Bank and Trust Company, the "Custodian") will be in the best position to know at any given moment the cash reserves held by each Fund and by each of its Portfolio Managers, to know the purpose and need for these reserves, and to make and implement decisions with respect to the investment of these reserves. The Custodian is in this position because it is the initial recipient of dividends and interest paid on securities owned by the Funds, the entity which pays redemption orders and dividend checks, the only entity immediately aware of and in a position to act in a timely fashion upon information with respect to the current deliveries and/or fails to deliver positions of the Funds' securities settlements, and the central communications point for daily contact with each of the Portfolio Managers concerning their portfolio investment commitments and strategies. As Portfolio Manager for the Money Market Portfolio, the Custodian could simply "sweep" the cash reserves held by each Portfolio Manager for its segment of a Fund's portfolio, invest those cash reserves in shares of the Money Market Fund, and have the Money Market Fund invest all of its cash assets in short-term, money market instruments.

Applicants cite several advantages to justify their Section 12(d)(1) request. They contend that their proposal will lower their aggregate custodial charges, and that a higher return will result from the pooling of assets for cash investment (in general, the larger the amount invested, the higher the obtainable return). Finally, to the extent the Portfolio Managers' cash reserves remain fragmented, the Funds will face reduced investment opportunities (large, attractive instruments are unaffordable) and lost investment opportunities (small cash balances cannot, as a practical matter, be readily and promptly invested).

Applicants contend that none of the abuses that Section 12(d)(1) was designed to prevent arise from their proposal. No layering of sales charges, advisory fees, or administrative expenses will exist. An investor pays a single fee to the Manager based upon its aggregate investment in the Funds irrespective of whether its assets are in the Money Market Fund or in one or more of the other Funds. The Funds themselves pay no direct fees to the Manager. Nor will control of the Money Market Fund create a problem for the Applicants' Section 12(d)(1) proposal. Applicants assert that the Money Market Fund's Portfolio Manager is aware of the short-term (frequently overnight) nature of the Funds' cash reserves and has no reason or incentive to manage the Money Market Fund in a manner contrary to the other Funds' needs. The Manager will not be susceptible to undue influence, from threatened redemptions, in its management of the Money Market Fund, because it derives its compensation from total assets managed, whether the assets are in the Money Market Fund or another Fund. Control through voting will not create a problem either, because the Funds will vote their Money Market Fund shares in the same proportion as the vote of all other Money Market Fund shareholders. The Applicants' Section 12(d)(1) proposal will not disrupt the orderly management of the Money Market Fund by forcing it to maintain greater liquidity than it would normally maintain. Unlike equity funds, for whom redemptions can create significant problems, the Money Market Fund is designed specifically to maintain a highly liquid portfolio. In fact, the Money Market Fund will purchase money market instruments based upon the liquidity needs of the other Funds. Applicants contend that their Section 12(d)(1) proposal will not prevent investors from appraising the true value of their investment. They state that the Money Market Fund's financial statements and schedule of portfolio securities will appear in the same annual and periodic reports as the other Funds' statements, and the investment objectives, policies, and restrictions of all Funds appear in the same prospectus. Thus, an investor will have no difficulty assessing the true value of a Fund's holding in the Money Market Fund.

Applicants assert that their Section 12(d)(1) proposal satisfies the exemptive standards of Section 17(b). Because the Money Market Fund intends to value its

portfolio pursuant to the amortized cost method, its shares will be bought and sold at their fair market value and therefore no overreaching will occur. Because the Portfolio Managers retain the freedom to invest some or all of their cash reserves directly in money market instruments, and would do so to enhance their total return and to thereby obtain a favorable evaluation, there exists and independent check upon the investment of a Fund's assets in an investment which produces a non-competititive rate of return. Conversely, the Money Market Fund reserves the right to discontinue selling shares to the other Funds if such sales adversely affect the portfolio management and operations of the Money Market Fund.

Applicants contend that their Section 12(d)(1) proposal deserves exemption from Section 17(d) of the Act and Rule 17d-1 thereunder because their proposal provides no basis on which to predict that any Fund would receive greater benefits than another. Because the Funds will participate in the proposal on the same basis, none will participate in a transaction on a basis "different or less advantageous" than that of other participants. Neither the Manager nor any Portfolio Manager will receive an unfair or unreasonable benefit; the Manager may experience reduced clerical costs and administrative convenience, but these benefits will be offset by the increased fees the Money Market Fund's Portfolio Manager will earn for managing more assets. The other Funds' Portfolio Managers may experience nominal cost savings, but their biggest benefit is the elimination of the need to invest relatively small sums of money in cash instruments. The Money Market Fund's Portfolio Manager will experience increased Portfolio Manager fees, but reduced custodial changes. Applicants contend that no "conflict of interest" exists between or among the Funds, and that no inherent bias exists to favor one Fund over another.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 18, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues 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 service (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. 83-29693 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23098; 70-5872]

The Columbia Gas System, Inc., et al.; Proposal To Add New Subsidiaries

October 27, 1983.

In the matter of the Columbia Gas System, Inc.; Columbia Alaskan Gas Transmission Corporation; Columbia LNG Corporation; and Columbia Gas System Service Corporation, 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas of Ohio, Inc.; Columbia Gas of West Virginia, Inc.; Columbia Gas of Kentucky, Inc.; Columbia Gas of Virginia, Inc.; Columbia Gas of Pennsylvania, Inc.; Columbia Gas of New York, Inc.; and Columbia Gas of Maryland, Inc., 99 North Front Street, Columbus, Ohio 43215; Columbia Coal Gasification Corporation; Columbia Hydrocarbon Corporation; and the Inland Gas Company, Inc., 340 17th Street, Ashland, Kentucky 41101; Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77077; Columbia Gas Development of Canada Ltd., 639 5th Avenue, S.W., Calgary, Alberta, Canada T2POM9; Columbia Gas Development Corporation, 1700 West Loop, South, Houston, Texas 77027; Commonwealth Gas Pipeline Corporation; Commonwealth Gas Services, Inc.; and Commonwealth Propane, Inc., 200 South Third Street, Richmond, Virginia 23219; Supplemental notice of proposal to add new subsidiaries to filing relating to system policy for loans and advances made to employees for moving expenses on intra-system transfers.

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its above-named wholly-owned subsidiary companies have filed a post-effective amendment to their declaration with this Commission pursuant to Sections 3(d), 9, and 20 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 48(d) thereunder.

By order dated August 24, 1976 in this proceeding (HCAR No. 19658), Columbia and its subsidiaries at that time were authorized to make loans in excess of $10,000 and without security of a first mortgage in accordance with Columbia's Transfer of Personnel Policy. By order dated August 8, 1981 (HCAAR No. 22166), in a separate proceeding, Columbia was authorized to acquire Commonwealth Gas Pipeline Corporation, Commonwealth Gas Services, Inc., and Commonwealth Propane, Inc. ("Commonwealth Companies").

Columbia now seeks authorization to add the Commonwealth Companies to the filing and to have them participate in the Transfer of Personnel Policy applicable to the other system subsidiaries.

The amended 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 November 21, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be 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. 83-29697 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13599; 812-5654]

The Royal Bank of Scotland; Application

October 27, 1983.

Notice is hereby given that The Royal Bank of Scotland plc ("Applicant") 42nd St. Andrew Square, Edinburgh, EH2, 2YE, filed an application on September 23, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested

persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable sections.

Applicant states that it was originally incorporated by Royal Charter in 1727, and now is a wholly-owned subsidiary of The Royal Bank of Scotland Group plc, a publicly quoted holding company. Applicant states that it is the largest bank in Scotland as of July 27, 1983.

Applicant states that it is a typical commercial bank, primarily engaged in receiving deposits and extending credit. Applicant further states that as of September 30, 1982, its total assets were approximately $8.170 billion (at the rate of exchange prevailing on that date) and its total liabilities were approximately $8.170 billion, of which approximately 87% consisted of deposits. As of September 30, 1982, the aggregate amount of loans made by Applicant constituted approximately 77% of its total assets. Interest income from loans (including deposits from other banks) accounted for 90% of Applicant's total income for the year period ended September 30, 1982. Applicant states that in addition to accepting deposits and making loans, it offers a full range of personal and commercial banking services.

Applicant represents that it is regulated by the Bank of England which requires Applicant to complete over thirty comprehensive returns annually, mostly on a monthly basis. The returns, cover all aspects of Applicants business and are in addition to visits made by Bank of England officials to discuss matters such as capital and liquidity adequacy, bad debt experience, geographic exposure, leverage, fixed asset ratios and profitability. Applicant represents that it is audited by independent accountants on behalf of its stockholders. Applicant also represents that its United States banking activities are subject to extensive federal supervision and regulation under the International Banking Act of 1978. Applicant states that its agency and branch are also subject to state regulation substantially similar to that of domestic banks.

Applicant proposes to issue and sell prime quality, unsecured short-term promissory notes of the type generally referred to as commercial paper (the "Notes"), denominated in United States dollars and in minimum denominations of $100,000. Applicant proposes to issue and sell the notes for the purpose of obtaining supplemental United States dollar funding for its current transactions. Applicant represents that the Notes will have a maturity of nine months or less, and will not be payable on demand nor provide for any extension renewal or automatic "roll-over" at the option of either the holder or Applicant. Applicant states that the Notes will be sold to one or more commercial dealers in the United States which will reoffer the Notes as principals to institutional investors and other sophisticated individuals who ordinarily buy commercial paper. Applicant represents that the offering will not be advertised or otherwise offered for sale to the general public. Applicant states that it will undertake to ensure that each offeree who has indicated an interest in the Notes will be provided, prior to sale, a memorandum which describes, Applicant's business and contains Applicant's most recent audited public annual financial statement (including a balance sheet, income statement, statement of changes in shareholder's equity, and a statement of appropriations for contingencies). The memorandum will also describe the material differences, if any, between the accounting principles applied in the preparation of Applicant's financial statements and generally accepted accounting principles applicable to United States banks. Applicant states that the memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States, and will be updated periodically to reflect material changes in Applicant's business and financial condition.

Applicant states that the Notes will be direct liabilities of the Applicant and will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated indebtedness (including deposit liabilities) of Applicant and superior to Applicant's equity securities. Applicant represents that the terms and manner of offering the Notes will be such that the Notes will qualify for the exemption from registration under the Securities Act of 1933 (the "1933 Act") provided by Section 3(a)(3) of the Act. Applicant further represents that it will not offer, issue or sell the Notes until it has received an opinion of its United States counsel to the effect that the Notes would be entitled to exemption under Section 3(a)(3) of the 1933 Act. Applicant does not request Commission review or approval of the opinion letter and the Commission expresses no opinion concerning availability of any such exemption. Applicant represents that the proposed issue of Notes and any future issuance of Notes by Applicant in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that Applicant's legal counsel in the United States will certify that such rating has been received.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. It will also appoint its New York branch as its agent to accept any process to be served upon it in any action based on the Notes and instituted by a holder thereof in any state or federal court. Applicant further states 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, and that such appointment and consent will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant states that it will also be subject to suit regarding such an action, in any other court in the United States which would have jurisdiction.

Applicant states that it may, from time to time, offer other debt securities for sale in the United States. Applicant represents that any such future offering will be accompanied by disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as those disclosure documents which customarily accompany offerings of similar securities in the United States. Applicant also represents that it will undertake to ensure that such disclosure documents will be provided to each interested offeree prior to sale. In connection with any future offering in the United States of its debt securities, Applicant makes the same representations with regard to appointment of an authorized agent to accept services of process and consent to jurisdiction that it makes with regard to its proposed commercial paper offerings. Applicant also consents to having an order pursuant to Section 6(c) of the Act being expressly conditioned on its compliance with the undertakings and representations set forth in its application.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant contends that without an exemption it would suffer a loss of competitiveness with respect to other commercial banks in the United States because domestic banks are expressly exempted from the definition of "investment company." Applicant asserts that its activities are extensively regulated by the Bank of England and the Federal and state

banking authorities in the United States. Applicant further asserts that, as a commercial bank, it is not an entity which Congress intended to regulate under the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 21, 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 service (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. 83-29606 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01M

[Release No. 23096; 70-6571]

Western Massachusetts Electric Company; Issuance and Sale of Notes

October 26, 1983.

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts, 01089, an electric utility subsidiary of Northeast Utilities, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

By orders dated November 9, 1976, and June 27, 1979, in File No. 70-5912 (HCAR Nos. 19750 and 21119) and by order dated March 27, 1981, in File No. 70-6571 (HCAR No. 21983), WMECO was authorized to issue and sell its secured promissory notes equally to Chemical Bank and Citibank, N.A., in the aggregate principal amount of $30 million pursuant to a Term Loan Agreement. Currently, WMECO pays interest at a rate equal to the greater of (a) 102% of the prime rate of Chemical Bank or (b) 102% of a rate ½ of 1% above the certificate of deposit rate. WMECO now proposes to amend the Term Loan Agreement effective as of October 1, 1983: (1) To extend the final maturity of the notes to December 31, 1988, from December 31, 1985; (2) to provide for an amortization schedule of four equal semiannual payments, each in the amount of $7,500,000, on the last days of June and December commencing June 30, 1987; and to change the interest payment provisions so as to allow WMECO to request, from time to time, that the loan, or any portion of the loan, be classified either as a Eurodollar Loan or an Alternate Base Rate Loan (both as defined in the Term Loan Agreement), resulting in an estimated savings of approximately $60,000 in interest expense.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 22, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-29608 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20331; (SR-Phlx-83-11)]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

October 27, 1983.

The Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, submitted on June 28, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to require all Phlx floor members to "clear the post" for a security on the Phlx floor before directly inputting the order (commitment) into the Intermarket Trading System ("ITS"). Floor brokers "clear the post" by requesting a market quote from the specialist; alternate specialists must in addition bid or offer at the post for the price and size of their intended interest prior to transmitting a commitment to another market via the ITS.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19935, July 1, 1983) and by publication in the **Federal Register** (48 FR 31953, July 12, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-29691 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13596; (812-5552)]

Related Forest City Elderly Housing Limited Partnership II and the Related Companies, Inc.; Application

October 24, 1983.

Notice is hereby given that Related Forest City Elderly Housing Limited Partnership II ("Partnership"), a Massachusetts limited partnership, and its managing general partner, The Related Companies, Inc., a Delaware corporation ("Related Companies" or the "Managing General Partner" and, together with the Partnership, referred to hereinafter as "Applicants"), 645 Fifth Avenue, New York, New York 10022, filed an application on May 16, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting the Partnership from all provisions of the Act and rules thereunder. 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 for the text of the applicable statutory provisions.

Applicants state that the Partnership was formed under the Massachusetts Uniform Limited Partnership Act on October 28, 1982, as a vehicle for equity investment in government-assisted rental housing for occupancy by elderly and/or handicapped persons in accordance with the provisions of Section 8 of the United States Housing Act of 1937, and Sections 221(d)(4) and 236(f)(2) of the National Housing Act of 1934, as amended, and in accordance with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). It is further stated that the Partnership is operating as a "two-tier" entity, i.e., the Partnership, as the sole limited partner, has reinvested in four other limited partnerships ("Local Limited Partnerships"), that in turn, engage in the ownership and operation of government-subsidized apartment complexes ("Projects"). Each Local Limited Partnership, it is stated, owns and operates a fully-constructed Project for occupancy by elderly and/or handicapped persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974).

Applicants state that in addition to Related Companies, the general partners of the Partnership are Related Elderly II Associates Limited Partnership, a Massachusetts partnership ("Related Elderly II"), and Forest City Dillon, Inc. ("Forest City"), an Ohio corporation ("Associate General Partners") (Related Companies, Related Elderly II and Forest City are collectively referred to hereinafter as "General Partners"). Applicants also state that the general partners of each Local Limited Partnership ("Project General Partners") are Forest City ("Project Managing General Partner"), Related Project Partnership Corporation ("Project Associate General Partner"), an affiliate of the Managing General Partner; and F.C.D. Third Limited Dividend Corp., an affiliate of Forest City, which will act as a Project General Partner of one Local Limited Partnership only (i.e., Brookpark Place Associates).

It is further stated that the Partnership has sold 90 units of limited partnership interest ("Units") at $59,400 per Unit, in transactions exempted from the registration requirement of Section 5 of the Securities Act of 1933, as amended ("Securities Act") and in compliance with Rule 506 of Regulation D under Section 4(2) of the Securities Act. Applicants state that the Units were sold on a "best efforts" basis through Shearson/American Express Inc. ("Placement Agent"), a member of the National Association of Securities Dealers, Inc., which received placement fees of $374,220 ($4,158 per Unit) amounting to 7% of gross offering proceeds. It is stated further that the offering of Units ended on April 18, 1983, and that the outstanding securities of the Partnership are presently beneficially owned by not more than 100 persons.

After deducting sales commissions and offering expenses (1.6% of gross offering proceeds), Applicants further state $4,886,780 remained available to the Partnership for investment. Applicants state that the Partnership paid expenses and fees to the Managing General Partner (in such capacity) in the amount of $121,400 (2.3% of gross offering proceeds) as a portion of the Partnership Management Fee for services to be rendered by the Managing General Partner in overseeing the management, administration and supervision of the business and affairs of the Partnership during the years 1983–1987. It is further stated that the Managing General Partner will receive a total Partnership Management Fee of $250,000 during the years 1983–1987 (50,000 per year), the balance of $128,600 derived from cash flow from the Local Limited Partnerships. From this Partnership Management Fee, Applicants state, the Managing General Partner will pay $5,000 each year to Shearson/American Express Real Estate Corporation ("Special Limited Partner/Financial Servicer"), an affilate of the Placement Agent, for assisting the Managing General Partner in providing financial, consulting and communications services concerning the Partnership. For its services in connection with the maintenance of records of the Limited Partners, communicating with the Limited Partners, and consulting with the Managing General Partner, the accountants and other professionals engaged by the Managing General Partner with respect to the Limited Partners' continuing participation in the Partnership, the Special Limited Partner Financial Servicer received $160,380 (3% of gross offering proceeds), paid by the Partnership from the amount available for investment, Applicants state. It is also stated that the Partnership paid to Forest City, City Rental Properties Corporation ("Properties"), an affiliate of Forest City, $2,275,000 (42.5% of the gross offering proceeds) as part of the consideration for the Partnership's acquisition from Properties of the beneficial ownership of the limited partner interest in each Local Limited Partnership, representing a 99% interest in each Local Limited Partnership. The balance of such consideration consists of a short-term purchase money note in the aggregate amount of $200,000, and a long-term purchase money note in the principal amount of $2,900,000. Also coming from the amount available for investment, Applicants state, was $1,050,000 (19.6% of gross offering proceeds) which the Partnership invested in the local Limited Partnerships, and which was paid directly to Forest City for services relating to the Projects.

Applicants further state that, because the Projects are ready to become operational, rather than establishing a reserve for contingencies, Forest City has agreed to lend to the Local Limited Partnerships any funds necessary to cover any operating deficits occurring during the three-year period commencing with the admission of the Partnership as limited partner of the Local Limited Partnerships, up to an aggregate amount not to exceed $1,100,000 at any time outstanding for all Local Limited Partnerships. It is further stated that the $1,280,000 (23.9% of the gross offering proceeds) balance of the amount available for investment will be used to finance a loan from Related Companies (the "Related Loan"), $142,222 representing an Origination Fee for the Related Loan, and $1,137,778 which will be used to pay interest on the Related Loan. The Partnership will use the proceeds of the Related Loan to fund these payments, it is stated.

Applicants state that the total acquisition cost of the Partnership's beneficial interest in all of the Local Limited Partnerships is $5,375,000. It is represented that this price was determined on the basis of an independent appraisal by Joseph J. Blake and Associates, Inc. of Woodbury, New York, a member of the American Institute of Real Estate Appraisers. Applicants also state that of $1,050,000 to be invested in the Local Limited Partnerships from the gross offering proceeds, $440,000 will be paid to Forest City as an "operating deficit guarantee fee", paid in consideration for Forest City's commitment to lend funds to the Local Limited Partnerships to meet operating deficits as described above, and the remaining $610,000 will be paid to Forest City as Partnership Management Fees in consideration of its management services for the Local Limited Partnerships. It is also stated that in connection with the transactions contemplated for the Partnership and the Local Limited Partnerships, Forest City has agreed to pay to Related Companies $275,000 in consideration of

its performance of certain tax, financial and consulting services.

It is stated further that Related Companies believes the fee structure to be fair, normal and not excessive for transactions structured with the tax characteristics of an offering of this type and sold to investors meeing suitability standards such as those applicable to holders of Partnership Units.

Applicants state further that the Partnership is controlled by the Managing General Partner pursuant to the Partnership Agreement. The Limited Partners, consistent with their limited liability status, are not entitled to participate in the control of the Partnership's business. A majority in interest of the Limited Partners, however, has the right to amend the Partnership Agreement, dissolve the Partnership and remove any General Partners and elect a replacement therefor under the circumstances set forth in the Partnership Agreement, it is stated. Applicants also state that under the Partnership Agreement, each Limited Partner is entitled to review all books of account of the Partnership at any and all reasonable times. It is further stated that under each Local Limited Partnership Agreement, the Project General Partners of that Partnership have the exclusive responsibility for operating the Local Limited Partnership and its Project. That responsibility, Applicants state, has been irrevocably delegated to Forest City, as Project Managing General Partner. Applicants assert that although the Partnership's direct control over the management of each apartment complex is limited, the Partnership's ownership of interests in Local Limited Partnerships is, in an economic sense, tantamount to direct ownership of the Projects themselves.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempted from all provisions of the Act pursuant to Section 6(c) of the Act. In support of this request, Applicants assert that such exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act.

Applicants assert that investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. They assert that the limited partnership structure provides the only means of bringing private equity capital into government-assisted housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally. Applicants state that the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual income tax return his proportionate share of the income and losses from the investment.

Applicants assert that despite the advantages it affords investors in government-assisted housing, the limited partnership form of organization is incompatible with the operational framework of the Act. By way of example, it is claimed that the Act requires annual approval by investors of a management contract, but a limited partner may incur general liability if given such voting rights and that the same problem exists with respect to the election of directors and the termination of the investment company management contract. In addition, it is further claimed that the asset coverage limitations imposed by Section 18 of the Act were designed to protect investors in securities from wide fluctuations in market prices and that such concerns are inapposite to the mortgage financing and other federal, state and local government-assisted programs developed for low and moderate income housing.

Applicants further state that interests in the Partnership were sold only to investors who met specified suitability standards which the Partnership believes are consistent with the securities laws of all states where the Units were sold. Subscriptions for Units were approved by the Managing General Partner, and such approval was required to be made conditional upon representations as to suitability of the investment for each subscriber, it is stated. It is represented that investors will receive extensive reports concerning the Partnership's business and operations. Applicants represent, in addition, that under the Partnership Agreement, each Limited Partner is entitled to review the books of account of the Partnership during normal business hours. Applicants further state that, although the interests of the General Partners and their affiliates may conflict in varous ways with the interests of Limited Partners, Limited Partners are adequately protected through disclosure in the private placement memorandum. Further protection for the interests of Limited Partners is provided, Applicants assert, by the numerous provisions of the Partnership Agreement designed to prevent overreaching by the General Partner and to assure fair dealing the General Partners with the Limited Partners.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 18, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact of law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. 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. 83-29692 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20330; (SR-NYSE-83-431)]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

October 26, 1983.

The New York Stock Exchange, Inc. ("NYSE") 11 Wall Street, New York, New York 10005, submitted on September 14, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to provide for the additional listing of three-month options series of NYSE index options that will expire during the months not included in the quarterly option series expiration cycle. Under the proposal, at least three and as many as four series with respect to any particular class of index options will expire in consecutive months and series expiring in five different months would be open for trading at any given time. In addition, the NYSE proposes to specify a March–June–September–December expiration cycle for the long-term series in the NYSE's proposed Composite Index option.

Notice of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20190, September 16, 1983) and by publication in the **Federal Register** (48 FR 43476, September 23, 1983). No comments were received with respect to the proposed rule filing.

We have previously approved proposed rule changes submitted by the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Incorporated ("CBOE") that permitted Amex and CBOE to list and trade broad-based stock index options series that expire in consecutive months.[1] The only difference between the NYSE's proposal and those of the Amex and CBOE is that the NYSE proposal permits series with five different expiration months, possibly as long as nine months away, while the Amex and CBOE proposals permitted only four series, all of which would be in consecutive months.[2] The NYSE states in its filing that it believes that there may be sufficient investor interest in longer-term options series to warrant the retention of such series. The NYSE adds that, because interest in longer-term series cannot be met by shorter-term options, the retention of longer-term options is likely to have little impact on the liquidity and depth of the Exchange's shorter-term options series. The Exchange explains that it is proposing to specify a March–June–September–December expiration cycle for the longer-term series in its Composite Index Option in order to facilitate strategies using both options and futures upon the NYSE Composite Index. The futures contract on the Composite Index trades on a March cycle.

We agree with the NYSE that its proposal, by providing for five expiration months, as many as four of which may be consecutive, does not create any significantly greater potential for reducing the liquidity and depth of any particular series of options than did the Amex or CBOE proposals. Furthermore, the NYSE proposal, by providing for the retention of longer-term options series, may provide investors with strategies not available under the Amex and CBOE proposals.[3] We find for these reasons as well as for the reasons discussed in the Amex and CBOE Releases, that the proposed rule change is consistent with the requirements of the Act and the rules under the Act applicable to a national securities exchange, and, in particular, the requirements of Section 6. For the reasons stated in the Amex and CBOE releases, this approval shall be effective as of December 1, 1983.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change is approved, effective as of December 1, 1983.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-29797 Filed 11-1-83; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 20201, September 20, 1983; 48 FR 43742, September 26, 1983; (the "Amex Release") and Securities Exchange Act Release No. 20284, October 14, 1983 (the "CBOE Release"). The approved proposed rule changes by Amex and CBOE will be effective on December 1, 1983.

[2] The NYSE proposal also differs from the Amex and CBOE proposals in that by its terms it is not limited to broad-based index options, while the Amex and CBOE proposals, as amended, applied only to braod-based index options. At this time, however, the only option the NYSE trades is the NYSE Composite Index Option, a broad-based index option. We also note that the Amex has filed and the Commission is reviewing a proposal to trade narrow-based index options which expire in consecutive months. Securities Exchange Act Release No. 20282, October 13, 1983.

[3] We note that one of the comments we received regarding the Amex proposal was that that proposal might deprive investors of the opportunity to take longer-term positions, *see* letter dated August 31, 1983, from Gerald Kuschuk, Senior Vice President, Options, Prudential Bache, to George A. Fitzsimmons, Secretary, SEC.

SMALL BUSINESS ADMINISTRATION

Proposed Information Collections Submitted for OMB Review

ACTION: Notice of proposed information collections submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received on or before November 30, 1983. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

Copies: Copies of the proposed forms, the requests for clearance (S.F. 83), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653–8338.

OMB Reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–4814.

Forms Submitted for Review:

Title: Retention of Books and Records on and Evidence of use of Disaster Loan Proceeds.
Form No.: SBA 1366.
Frequency: On occasion.
Description of Respondents: Disaster Loan Borrowers.
Annual Responses: 6,750.
Annual Burden Hours: 6,750.
Type of Request: Revision.

Title: Application for Business Loan (SBA Form 4, et al.).
Form Nos.: SBA Form 4, 4I, and 4 Schedule A.
Frequency: On occasion.
Description of Respondents: Lender, applicant or appraiser.
Annual Responses: 30,000.
Annual Burden Hours: 600,000.
Type of Request: Extension.

Dated: October 28, 1983.

Elizabeth M. Zaic,

Chief, Paperwork Management Branch, Small Business Administration.

[FR Doc. 83-29771 Filed 11-1-83; 8:45 am]

BILLING CODE 8025-01-M

Oklahoma; Declaration of Disaster Loan Area No. 2106

As a result of the President's major disaster declaration, I find that the Counties of Caddo, Canadian, Cleveland, Comanche, Garvin, Grady, Logan, McClain, Oklahoma and Pottawatomie, in the state of Oklahoma constitute a disaster loan area because of damage resulting from severe storms and flooding beginning on or about October 19, 1983. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 27, 1983, and for economic injury until July 26, 1984, at: U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Federal Building, Oklahoma City, Oklahoma 73102 or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	12.750
Homeowners without credit available elsewhere	6.375
Businesses with credit available elsewhere	11.000
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organizations including charitable and religious organizations)	10.500

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 27, 1983.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 83-29770 Filed 11-1-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Number: 135-1]

Transfer of Currency Operations Division to the Bureau of Engraving and Printing

Dated: October 17, 1983.

By virtue of the authority vested in me by 5 U.S.C. 301, 31 U.S.C. 321, 31 U.S.C. 3112 and 31 U.S.C. 5120, there is transferred to the Bureau of Engraving and Printing, the Currency Operations Divison of the Bureau of Government Financial Operations, together with its functions relating to the redemption and destruction of security items.[1] All positions, personnel, records, property, contracts, powers, duties, responsibilities and unexpended balances (available or to be made available) attributable to the Currency Operations Division are transferred to the Bureau of Engraving and Printing, and such physical transfers as necessary to effectuate this Order shall be performed in a manner and at such time as agreeable to the Commissioner of the Bureau of Government Financial Operations and the Director of the Bureau of Engraving and Printing.

The authority, subject to the Departmental review process, to promulgate regulations governing the destruction of security items is hereby delegated to the Treasurer of the United States and to the Assistant Secretary (Enforcement and Operations). Such regulations now in effect shall remain in effect until amended or otherwise modified, except those inconsistent with this Order.

Treasury Department Order 235, April 4, 1975, is rescinded. Treasury Department Order 229, January 14, 1974, and Treasury Department Order 229-1, March 11, 1974 are amended to effect the transfer of this function. All other functions provided for in Treasury Order 229 and Treasury Order 229-1 shall remain in effect.

This Order is effective immediately.

Donald T. Regan,

Secretary of the Treasury.

[FR Doc. 83-29716 Filed 11-1-83; 8:45 am]

BILLING CODE 4810-25-M

[1] Security items for purposes of this order are defined as unfit currency, redeemed and unissued securities and coupons, waste and spoiled items produced in printing currency, securities, postage stamps, food stamps, and the like, worn-out or obsolete plates, dies, bedpieces, and other similar items and materials.

Fiscal Service

[Dept. Circ. 570, 1982 Rev., Supp. No. 29]

Builders Mutual Surety Company; Surety Companies Acceptable on Federal Bonds, Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Builders Mutual Surety Company, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective October 1, 1983. The company was last listed as an acceptable surety on Federal bonds at 47 FR 28873, July 1, 1982.

With respect to any bonds currently in force with Builders Mutual Surety Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226, telephone (202) 634-5745.

Dated: October 25, 1983.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 83-29740 Filed 11-1-83; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 213
Wednesday, November 2, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, November 1, 1983.

CHANGE IN THE MEETING: The meeting is postponed until 9:30 a.m. (eastern time), Tuesday, November 8, 1983.

In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Secretary to the Commission at (202) 634–6748.

Issued: October 31, 1983.

[S–1535–83 Filed 10–31–83; 3:13 pm]

BILLING CODE 6570–06–M

2

FEDERAL RESERVE SYSTEM,

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, November 7, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 28, 1983.

William W. Wiles,

Secretary of the Board.

[S–1533–83 Filed 10–28–83; 4:45 pm]

BILLING CODE 6210–01–M

3

NUCLEAR REGULATORY COMMISSION

DATE: Week of October 31, 1983 (revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, November 3:*

10:00 a.m.
Briefing by Breaker Vendors (Public Meetings) (Time Change)

1:30 p.m.
Report of New Allegations (Closed—Exemptions 5 and 7) (New Item)

2:00 p.m.
Discussion of Hearing Requests and Whether to Lift Suspension at Diablo Canyon (Closed—Exemptions 5 and 10) (New Item)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (Item Revised)
a. Amendments to 10 CFR 50 Related to ATWS Events
b. Final Rulemaking Concerning Fitness for Duty for Personnel with Unescorted Access to Protected Areas
c. Hearing Requests on Proposed Decommissioning of West Chicago Rare Earths Facility
d. Final Immediate Effectiveness Order for San Onofre 2 and 3 *(Tentative)*
e. Revision to 10 CFR Part 51 and Related Conforming Amendments—Implementation of CEQ NEPA Regulations *(Tentative)*

ADDITIONAL INFORMATION: Affirmation of Fuel Load Decision—Diablo Canyon scheduled for November 3 is *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

October 27, 1983.

Walter Magee,

Office of the Secretary.

[S–1532–83 Filed 10–28–83; 4:26 pm]

BILLING CODE 7590–01–M

4

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 48 FR 48895, October 21, 1983.

STATUS: Closed Meeting.

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 18, 1983.

CHANGE IN THE MEETING: Additional item. The following additional item was considered at a closed meeting scheduled on Tuesday, October 25, 1983, at 1 p.m.:

Formal order of investigation.

Chairman Shad and Commissioners Evans and Treadway determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorties require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Robert Lipsher at (202) 272–3195.

October 28, 1983.

[S–1534–83 Filed 10–31–83; 11:13 am]

BILLING CODE 8010–01–M

federal register

Wednesday
November 2, 1983

Part II

Department of Transportation

Urban Mass Transportation Administration

Appointment of the Formula Funds Provided Under the Federal Public Transportation Act of 1982

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Apportionment of the Formula Funds Provided Under the Federal Public Transportation Act of 1982

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Public Transportation Act of 1982 (Pub. L. 97–424) establishes a new Section 9 formula program for FY 1984. This notice contains the complete apportionment for all urbanized and non-urbanized areas.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Bolton, Director, Office of Policy, (202) 426–4060, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The Federal Public Transportation Act of 1982 (Pub. L. 97–424), effective January 6, 1983, establishes a new Section 9 formula program in FY 1984. The statutory formula requires for its calculation data which had not previously been submitted to UMTA. UMTA, on February 2, 1983, published Circular 9020.1 requesting the required supplemental data. The supplemental data has now been received.

This Notice, based on previously submitted Section 15 reports and the supplemental data, is a 100 percent apportionment for all urbanized areas of Section 9 funds. In addition, the Notice also includes the Section 18 program apportionments for non-urbanized areas.

Funds apportioned under Section 9 are available for a period of three (3) years following the fiscal year in which the funds are apportioned, after which time all unobligated carryover funds become available for reapportionment under Section 9. Further information on the program is contained in UMTA Circular 9030.1, published June 27, 1983.

Funds apportioned to non-urbanized areas under Section 18 are available for a period of two (2) years following the fiscal year in which the funds are apportioned, after which time all unobligated carryover funds become available for reapportionment under Section 18. Further information on the program is contained in UMTA Circular 9040.1, published September 26, 1983.

On August 8, 1983, UMTA published in the **Federal Register** a Notice (48 FR 36051) inviting comments on adopting a broader definition of eligibility for privately provided services than was followed in the FY 1983 Section 9A program. The comments are available for public inspection at the Urban Mass Transportation Administration, 400 Seventh Street, S.W., Room 9223, Washington, D.C. 20590, Docket 83–E.

UMTA believes that data for certain private transit services should be included in the future in the statistical data base upon which the Section 9 apportionment is calculated. However, after reviewing the comments to the docket and other information, UMTA has determined that because of definitional questions resulting from the diversity in the types of services and issues regarding the availability and reliability of data, these categories of private services should be phased in over time. Thus, apportionments for FY 1984 will be based on existing criteria requiring that such services be under contract to a public body.

Regarding phasing services, UMTA has made the following determination regarding the categories of privately provided services described in the August 8, 1983, Notice. First, data for private conventional and subscription bus services can be immediately included in annual Section 15 reports. Such services need not be under contract with a public body. This means the data currently being collected for the 1984 reporting period to be used for FY 1986 apportionments (reporter's fiscal years ending between July 1, 1983 and June 30, 1984) can include all private conventional and subscription bus services. It is UMTA's intention that such data be voluntarily provided by the private service providers and proprietary information need not be divulged. Second, we will continue to analyze the possible inclusion of jitney and airport limousine services for future year allocations. These two categories are not to be included in data collection for the FY 1984 operating period, but may be in future years. Third, the remaining private services not under contract such as carpools and vanpools are not being considered for inclusion at this time.

UMTA will shortly publish a supplemental **Federal Register** Notice which will provide a more detailed analysis of the comments received, the rationale for UMTA's decision, and specific information on data collection for conventional and subscription bus services.

All service level statistical data provided for the Section 9 apportionment must be verifiable and will be audited. Audits now are required under the STAA of 1982 and UMTA will conduct such audits to assure that the data is valid and to assure that the apportionment is fair. This apportionment has been adjusted as necessary to correct for excess apportionments received by certain urbanized areas in FY 1983 under Section 9A due to errors in reporting data. Urbanized areas that have had statistical data and financial adjustments will be notified by UMTA.

Issued on October 27, 1983.

G. Kent Woodman,

Acting Deputy Administrator.

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982

State/urbanized area	Obligation level
Alabama:	
Birmingham	$3,680,837
Mobile	1,921,711
Governor's apportionment for areas 50,000 to 200,000 population	5,634,595
Montgomery	(1,498,700)
Huntsville	(1,005,171)
Tuscaloosa	(736,352)
Anniston	(490,096)
Gadsden	(451,005)
Florence	(479,483)
Decatur	(357,356)
Dothan	(312,532)
Auburn	(303,900)
Non-urbanized	1,671,754
State total	13,108,897
Alaska:	
Governor's apportiohment for areas 50,000 to 200,000 population	1,142,834
Anchorage	(1,142,834)
Non-urbanized	181,911
State total	1,324,745
Arizona:	
Phoenix	10,234,793
Tuscon	5,480,829
Governor's apportionment for areas 50,000 to 200,000 population	(485,235)
Yuma, AZ–CA	(485,235)
Non-urbanized	631,989
State total	16,832,846
Arkansa:	
Little Rock-North Little Rock	2,273,583
Governor's apportionment for areas 50,000 to 200,000 population	1,684,824
Fort Smith, AR–OK	(587,827)
Pine Bluff	(540,418)
Fayetteville-Springdale	(394,686)
Texarkana, AR–TX	(161,893)
Non-urbanized	1,353,383
State total	5,311,790
California:	
Los Angeles-Long Beach	137,644,282
San Francisco-Oakland	100,109,692
San Diego	21,460,655
San Jose	19,965,208
Sacramento	9,020,973
Riverside-San Bernardino	8,241,724
Oxnard-Ventura-Thousand Oaks	2,732,712
Bakersfield	2,260,268
Governor's apportionment for areas 50,000 to 200,000 population	16,878,491
Stockton	(2,141,429)
Modesto	(1,790,536)
Santa Barbara	(1,657,044)
Santa Rosa	(1,311,863)
Santa Cruz	(939,891)
Seaside-Monterey	(1,210,187)
Antioch	(948,877)
Salinas	(1,162,406)
Simi Valley	(824,171)
Fairfield	(589,425)
Palm Springs	(423,629)
Yuba City	(554,706)
Napa	(624,349)
Visalia	(528,787)

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Santa Maria	(532,237)
Lancaster	(380,837)
Hemet	(458,817)
Redding	(350,846)
Chico	(433,987)
Yuma, AZ–CA	(3,667)
Non-urbanized	3,060,078
State Total	325,525,444
Colorado:	
Denver	16,737,168
Colorado Springs	2,495,906
Governor's apportionment for areas 50,000 to 200,000 population	3,731,616
Pueblo	(1,009,777)
Boulder	(921,895)
Fort Collins	(690,667)
Greeley	(664,976)
Grand Junction	(444,301)
Non-urbanized	685,612
State total	23,650,302
Connecticut:	
Hartford	7,108,626
Bridgeport	4,829,203
New Haven	5,956,488
Governor's apportionment for areas 50,000 to 200,000 population	14,420,824
Stamford	(3,199,743)
Waterbury	(2,978,162)
New London-Norwich	(1,069,989)
New Britain	(1,300,082)
Norwalk	(2,505,493)
Danbury, NY–CT	(2,197,363)
Bristol	(648,820)
Meriden	(521,712)
Non-urbanized	622,663
State total	32,937,804
Delaware:	
Wilmington, DE–NJ	3,861,213
Non-urbanized	178,119
State total	4,039,332
Florida:	
Miami	22,988,425
Fort Lauderdale	8,543,136
St. Petersburg	7,361,250
Jacksonville	6,546,067
Orlando	3,345,509
Tampa	3,902,965
West Palm Beach	4,287,962
Sarasota-Bradenton	2,373,610
Pensacola	1,435,763
Melbourne-Cocoa	1,297,913
Governor's apportionment for areas 50,000 to 200,000 population	7,794,626
Daytona Beach	(1,289,042)
Fort Myers	(1,019,921)
Tallahassee	(924,224)
Lakeland	(831,377)
Gainesville	(863,299)
Fort Walton Beach	(605,835)
Panama City	(550,961)
Winter Haven	(539,609)
Fort Pierce	(481,133)
Naples	(344,335)
Ocala	(344,890)
Non-urbanized	1,820,517
State total	71,697,763
Georgia:	
Atlanta	23,784,101
Augusta	1,576,824
Columbus	1,823,448
Governor's apportionment for areas 50,000 to 200,000 population	4,340,313
Savannah	(1,346,778)
Macon	(1,115,889)
Albany	(625,661)
Athens	(462,934)
Warner Robins	(437,938)
Rome	(350,915)

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Non-urbanized	2,246,251
State total	33,770,937
Hawaii:	
Honolulu	17,711,924
Governor's apportionment for areas 50,000 to 200,000 population	1,115,645
Kailua-Kaneohe	(1,115,645)
Non-urbanized	217,187
State total	19,044,756
Idaho:	
Governor's apportionment for areas 50,000 to 200,000 population	1,618,865
Boise City	(1,166,341)
Pocatello	(452,324)
Non-urbanized	593,547
State total	2,212,212
Illinois:	
Chicago,IL-Northwestern, IN	187,934,449
Davenport-Rock Island-Moline	2,522,185
Peoria	2,223,495
Rockford	1,984,653
Governor's apportionment for areas 50,000 to 200,000 population	10,714,977
Joliet	(1,516,907)
Aurora	(1,418,248)
Springfield	(1,170,351)
Champaign-Urbana	(1,321,826)
Decatur	(952,253)
Elgin	(1,057,852)
Alton	(704,595)
Bloomington-Normal	(927,911)
Round Lake Beach	(491,584)
Kankakee	(615,661)
Danville	(457,536)
Beloit, WI–IL	(59,779)
Dubuque, IA–IL	(20,472)
Non-urbanized	2,460,504
State total	207,840,253
Indiana:	
Indianapolis	6,907,285
Fort Wayne	2,430,646
South Bend, IN–MI	2,294,448
Governor's apportionment for areas 50,000 to 200,000 population	6,537,487
Evansville, IN–KY	(1,482,271)
Munice	(866,835)
Lafayette-West Lafayette	(962,737)
Elkhart-Goshen	(676,404)
Anderson	(599,555)
Terre Haute	(653,027)
Bloomington	(675,146)
Kokomo	(621,512)
Non-urbanized	2,269,188
State total	20,439,052
Iowa:	
Des Moines	2,665,934
Governor's apportionment for areas 50,000 to 200,000 population	2,678,393
Cedar Rapids	(1,148,888)
Waterloo	(810,385)
Sioux City, IA–NE–SD	(619,992)
Dubuque, IA–IL	(613,096)
Iowa City	(486,032)
Non-urbanized	1,556,706
State total	7,901,033
Kansas:	
Wichita	2,776,630
Governor's apportionment for areas 50,000 to 200,000 population	1,572,471
Topeka	(1,052,284)
Lawrence	(510,292)
St. Joseph, MO–KS	(9,895)
Non-urbanized	1,185,330
State total	5,536,431
Kentucky:	
Louisville, KY–IN	9,109,490

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Governor's apportionment for areas 50,000 to 200,000 population	3,397,395
Lexington	(1,818,497)
Owensboro	(655,608)
Evansville, IN–KY	(239,061)
Clarksville, KY–TN	(136,575)
Huntington, KY–OH–WV	(547,654)
Non-urbanized	1,907,126
State total	14,414,011
Louisiana:	
New Orleans	16,329,630
Baton Rouge	2,583,108
Shreveport	2,514,962
Governor's apportionment for areas 50,000 to 200,000 population	3,912,847
Lake Charles	(892,181)
Lafayette	(1,035,298)
Monroe	(841,433)
Alexandria	(693,240)
Houma	(450,695)
Non-urbanized	1,574,212
State total	26,914,759
Maine:	
Governor's apportionment for areas 50,000 to 200,000 population	1,676,106
Portland	(822,956)
Lewiston-Auburn	423,674)
Bangor	(358,144)
Portsmouth-Dover-Rochester, NH–ME	(71,332)
Non-urbanized	687,847
State total	2,363,753
Maryland:	
Baltimore	26,683,726
Governor's apportionment for areas 50,000 to 200,000 population	1,472,412
Hagerstown, MD–PA	(513,639)
Annapolis	(536,038)
Cumberland, MD–WV	(422,735)
Non-urbanized	844,824
State total	29,000,962
Massachusetts:	
Boston	54,419,579
Springfield-Chicopee-Holyoke, MA–CT	5,141,050
Worcester	2,518,661
Lawrence-Haverhill, MA–NH	2,574,140
Governor's apportionment for areas 50,000 to 200,000 population	7,322,107
Brockton	(1,761,863)
Lowell, MA–NH	(1,489,083)
Fall River, MA–RI	(1,349,152)
New Bedford	(1,496,304)
Fitchburg-Leominster	(514,550)
Pittsfield	(393,524)
Taunton	(317,631)
Non-urbanized	1,015,058
State total	72,990,595
Michigan:	
Detroit	45,361,159
Grand Rapids	3,251,332
Flint	2,597,487
Lansing	2,875,361
Ann Arbor	2,312,476
Governor's apportionment for areas 50,000 to 200,000 population	6,571,143
Kalamazoo	(1,283,208)
Saginaw	(1,463,355)
Muskegon-Muskegon Heights	(841,437)
Jackson	(701,317)
Battle Creek	(592,574)
Bay City	(682,326)
Benton Harbor	(495,219)
Port Huron	(511,707)
Non-urbanized	2,733,585
State total	66,702,543
Minnesota:	
Minneapolis-St. Paul	19,385 902

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Governor's apportionment for areas 50,000 to 200,000 population	2,205,550
Duluth-Superior, MN-WI	(643,538)
Rochester	(610,727)
St. Cloud	(536,597)
Fargo, ND-MN	(290,776
Grand Forks, ND-MN	(87,998)
LaCrosse, WI-MN	(35,914)
Non-urbanized	1,588,186
State total	23,180,638
Mississippi:	
Jackson	1,709,034
Governor's apportionment for areas 50,000 to 200,000 population	2,111,779
Biloxi-Gulfport	(1,280,621)
Pascagoula-Moss Point	(441,825)
Hattiesburg	(389,333)
Non-urbanized	1,517,384
State total	5,338,197
Missouri:	
St. Louis, MO-IL	19,901,610
Kansas City, MO-KS	9,376,083
Governor's apportionment for areas 50,000 to 200,000 population	2,603,179
Springfield	(1,148,554)
St. Joseph, MO-KS	(608,518)
Columbia	(474,249)
Joplin	(371,856)
Non-urbanized	1,803,818
State total	33,684,690
Montana:	
Governor's apportionment for areas 50,000 to 200,000 population	1,890,392
Billings	(743,962)
Great Falls	(657,539)
Missoula	(488,891)
Non-urbanized	454,041
State total	2,344,433
Nebraska:	
Omaha, NE-IA	6,178,638
Governor's apportionment for areas 50,000 to 200,000 population	1,769,283
Lincoln	(1,693,381)
Sioux City, IA-NE-SD	(75,902)
Non-urbanized	734,918
State total	8,682,839
Nevada:	
Las Vegas	2,921,553
Governor's apportionment for areas 50,000 to 200,000 population	1,424,873
Reno	(1,424,873)
Non-urbanized	161,277
State total	4,507,703
New Hampshire:	
Governor's apportionment for areas 50,000 to 200,000 population	2,154,693
Portsmouth-Dover-Rochester, NH-ME	(547,343)
Manchester	(946,883)
Nashua	(649,618)
Lowell, MA-NH	(8,849)
Non-urbanized	402,697
State total	2,647,590
New Jersey:	
Trenton, NJ-PA	4,986,020
Governor's apportionment for areas 50,000 to 200,000 population	1,671,046
Atlantic City	(1,170,002)
Vineland-Millville	(501,044)
Non-urbanized	842,953
State total	7,500,019
New Mexico:	
Albuquerque	4,063,015

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Governor's apportionment for areas 50,000 to 200,000 population	812,071
Las Cruces	(433,919)
Santa Fe	(378,152)
Non-urbanized	610,739
State total	5,485,825
New York:	
New York, NY-NE. NJ	601,097,531
Buffalo	9,955,806
Rochester	7,228,905
Albany-Schenectady-Troy	7,903,114
Syracuse	5,159,399
Governor's apportionment for areas 50,000 to 200,000 population	5,348,862
Binghamton	(1,497,741)
Utica	(1,261,848)
Poughkeepsie	(1,052,991)
Elmira	(652,952)
Newburgh	(477,046)
Glens Fall	(363,354)
Danbury, CT-NY	(22,930)
Non-urbanized	2,957,733
State total	639,651,350
North Carolina:	
Charlotte	3,695,512
Fayetteville	1,232,721
Raleigh	1,972,928
Governor's apportionment for areas 50,000 to 200,000 population	9,142,622
Winston-Salem	(1,272,862)
Greensboro	(1,520,608)
Durham	(1,355,362)
Gastonia	(755,104)
Asheville	(690,056)
High Point	(718,773)
Wilmington	(583,175)
Jacksonville	(480,655)
Concord	(486,177)
Burlington	(490,451)
Hickory	(407,247)
Goldsboro	(382,140)
Non-urbanized	3,047,308
State total	19,091,091
North Dakota:	
Governor's apportionment for areas 50,000 to 200,000 population	1,600,789
Fargo-Morehead, ND-MN	(640,616)
Bismarck-Mandan	(509,470)
Grand Forks, ND-MN	(450,703)
Non-urbanized	373,770
State total	1,974,559
Ohio:	
Cleveland	29,922,502
Cincinnati	13,621,058
Columbus	9,349,533
Dayton	12,125,708
Akron	4,992,044
Toledo, OH-MI	6,084,805
Youngstown-Warren	2,469,217
Canton	1,782,787
Lorain-Elyria	939,859
Governor's apportionment for areas 50,000 to 200,000 population	5,194,338
Hamilton	(940,926)
Middletown	(670,734)
Springfield	(925,560)
Mansfield	(593,624)
Steubenville-Weirton, OH-WV-PA	(345,023)
Lima	(600,289)
Newark	(403,020)
Parkersburg, WV-OH	(74,336)
Sharon, PA-OH	(49,224)
Wheeling, WV-OH	(288,635)
Huntington-Ashland, WV-KY-OH	(302,967)
Non-urbanized	3,345,527
State total	89,827,378
Oklahoma:	
Oklahoma City	4,211,403

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Tulsa	3,603,781
Governor's apportionment for areas 50,000 to 200,000 population	1,137,566
Lawton	(756,292)
Enid	(364,808)
Ft. Smith, AR-OK	(16,466)
Non-urbanized	1,381,143
State total	10,333,893
Oregon:	
Portland, OR-WA	15,832,707
Governor's apportionment for areas 50,000 to 200,000 population	3,613,292
Eugene	(1,855,524)
Salem	(1,289,039)
Medford	(456,141)
Longview, WA-OR	(12,588)
Non-urbanized,	1,072,032
State total	20,518,031
Pennsylvania:	
Philadelphia, PA-NJ	107,840,673
Pittsburgh	33,352,460
Scranton-Wilkes-Barre	3,698,009
Allentown-Easton-Bethlehem, PA-NJ	4,286,716
Harrisburg	2,626,572
Governor's apportionment for areas 50,000 to 200,000 population	10,326,788
Erie	(2,032,733)
Reading	(1,894,704)
Lancaster	(1,425,833)
York	(1,253,388)
Johnstown	(843,067)
Altoona	(792,962)
Monessen	(496,056)
Williamsport	(553,868)
State College	(588,419)
Sharon, PA-OH	(432,177)
Hagerstown, MD-PA	(9,898)
Steubenville, OH-WV-PA	(3,663)
Non-urbanized	3,668,152
State total	165,819,390
Rhode Island:	
Providence-Pawtucket, RI-MA	15,165,117
Governor's apportionment for areas 50,000 to 200,000 population	616,320
Newport	(450,402)
Fall River, MA-RI	(165,918)
Non-urbanized	122,800
State total	15,904,237
South Carolina:	
Charleston	1,319,982
Columbia	1,330,357
Greenville	1,195,300
Governor's apportionment for areas 50,000 to 200,000 population	1,808,389
Spartanburg	(695,865)
Florance	(390,420)
Anderson	(372,299)
Rock Hill	(349,805)
Non-urbanized	1,517,586
State total	7,171,614
South Dakota:	
Governor's apportionment for areas 50,000 to 200,000 population	118,356
Sioux Falls	(716,859)
Rapid City	(416,867)
Sioux City, IA-NE-SD	(14,630)
Non-urbanized	433,611
State total	1,581,967
Tennessee:	
Memphis, TN-MS	6,830,687
Nashville-Davidson	4,536,255
Chattanooga	2,316,625
Knoxville	2,506,804
Governor's apportionment for areas 50,000 to 200,000 population	2,036,566
Kingsport, TN-VA	(527,936)

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Johnson City	(536,399)
Clarksville, TN-KY	(412,123)
Bristol, TN-VA	(211,570)
Jackson	(348,538)
Non-urbanized	1,967,236
State total	22,194,173
Texas:	
Dallas-Fort Worth	21,582,673
Houston	21,832,695
San Antonio	13,638,894
El Paso	4,861,209
Auston	3,485,912
Corpus Christi	1,902,227
Governor's apportionment for areas 50,000 to 200,000 population	18,071,795
Lubbock	(1,409,439)
McAllen-Pharr-Edinburg	(1,464,798)
Amarillo	(1,195,907)
Waco	(909,843)
Beaumont	(907,201)
Port Arthur	(808,042)
Texas City-La Marque	(565,142)
Odessa	(891,533)
Abilene	(672,297)
Laredo	(1,242,025)
Wichita Falls	(754,469)
Brownsville	(933,484)
Killeen	(786,115)
Bryan-College Station	(645,735)
San Angelo	(603,095)
Tyler	(606,330)
Midland	(589,967)
Longview	(482,713)
Harlingen-San Benito	(503,958)
Texarkana, TX-AR	(300,573)
Galverston	(521,264)
Sherman-Denison	(375,472)
Temple	(345,936)
Victoria	(474,437)
Non-urbanized	4,006,405
State total	89,382,010
Utah:	
Salt Lake City	9,712,347
Ogden	829,737
Governor's apportionment for areas 50,000 to 200,000 population	1,464,365
Provo-Orem	(1,464,365)
Non-urbanized	323,125
State total	12,329,574

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Vermont:	
Governor's apportionment for areas 50,000 to 200,000 population	572,965
Burlington	(572,965)
Non-urbanized	341,610
State total	914,575
Virginia:	
Norfolk-Portsmouth	8,427,510
Richmond	5,171,578
Newport News-Hampton	2,889,011
Governor's apportionment for areas 50,000 to 200,000 population	4,078,862
Roanoke	(1,462,944)
Petersburg-Colonial Heights	(825,842)
Lynchburg	(599,877)
Charlotteville	(605,370)
Danville	(427,706)
Bristol, TN-VA	(128,004)
Kingsport, TN-VA	(29,119)
Non-urbanized	1,808,361
State total	22,375,322
Washington:	
Seattle-Everett	34,475,254
Tacoma	5,629,452
Spokane	2,911,789
Governor's apportionment for areas 50,000 to 200,000 population	3,443,364
Richland-Kennewich	(847,268)
Yakima	(743,723)
Olympia	(516,487)
Bremerton	(513,159)
Longview, WA-OR	(405,304)
Bellingham	(417,423)
Non-urbanized	1,186,563
State total	47,646,422
West Virginia:	
Governor's apportionment for areas 50,000 to 200,000 population	3,714,858
Huntington-Ashland, WV-OH-KY	(782,984)
Charleston	(1,373,171)
Wheeling, WV-OH	(701,598)
Parkersburg, OH-WV	(578,604)
Cumberland, MD-WV	(24,578)
Steubenville, OH-WV-PA	(253,923)
Non-urbanized	1,214,501
State total	4,929,359
Wisconsin:	
Milwaukee	17,015,750

FISCAL YEAR 1984 FINAL APPORTIONMENT OF FORMULA FUNDS PROVIDED UNDER THE FEDERAL PUBLIC TRANSPORTATION ACT OF 1982—Continued

State/urbanized area	Obligation level
Madison	4,095,837
Governor's apportionment for areas 50,000 to 200,000 population	8,596,175
Green Bay	(1,085,682)
Appleton	(1,439,036)
Racine	(1,319,869)
Kenosha	(1,044,893)
Eau Claire	(557,725)
La Crosse, WI-MN	(593,356)
Sheboygan	(559,806)
Wausau	(440,105)
Oshkosh	(545,800)
Janesville	(455,607)
Beloit, WI-IL	(364,873)
Duluth, MN-WI	(189,423)
Non-urbanized	1,860,790
State total	31,568,552
Wyoming:	
Governor's apportionment for areas 50,000 to 200,000 population	1,081,269
Casper	(580,031)
Cheyenne	(501,258)
Non-urbanized	276,350
State total	1,357,619
Washington, D.C. MD-VA:	
State total	62,868,345
Puerto Rico:	
San Juan	15,597,455
Governor's apportionment for areas 50,000 to 200,000 population	7,265,367
Non-urbanized	1,160,106
State total	24,022,928
American Samoa:	
Non-urbanized	25,367
State total	25,367
Guam:	
Non-urbanized	83,240
State total	83,240
N. Mariana:	
Non-urbanized	13,180
State total	13,180
Virgin Islands:	
Non-urbanized	75,849
State total	75,849

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Wednesday
November 2, 1983

Part III

Department of Labor

Employment and Training Administration

Establishment and Functioning of State Employment Services (Wagner-Peyser Act as Amended by Pub. L. 97-300); Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 602, 603, 604, 651, 652, and 653

Establishment and Functioning of State Employment Services (Wagner-Peyser Act as Amended by Pub. L. 97-300)

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations to implement the Wagner-Peyser Act as amended by the Job Training Partnership Act regarding establishment and functioning of State employment services. The amendments to the Wagner-Peyser Act expand the role of Governors and private employers in matters relating to unemployment and the development of a skilled work force, and link more closely the employment service and Job Training Partnership Act programs.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Keefe, Telephone (202) 376-6600.

SUPPLEMENTARY INFORMATION: The rules published in this document implement the Wagner-Peyser Act (the Act), as amended by the Job Training Partnership Act (JTPA), Pub. L. 97-300. They replace the regulations at 20 CFR Parts 602, 603, 604, 651.1-651.9, 653 Subparts A and E, which are hereby rescinded as of the effective date of this action. The regulations at 20 CFR Parts 651.10; 653, Subparts B and F; and 654 Supbart E, pertaining to the provision of services to migrant and seasonal farmworkers (MSFWs), are retained in accordance with the requirements of the *NAACP* v. *Marshall* order and settlement agreement.

The JTPA amendments to the Act are effective October 1, 1983.

A comprehensive reading of the Act, and in particular the provisions of Section 6, shows that Congress intended the revised program to be in place and operational by October 1, 1983. The Wagner-Peyser system is an ongoing program which is being affected by statutory changes that became effective October 1, 1983. These changes are basic to the operation of the system, and these final regulations implement the statutory changes. The fiscal year 1984 grants have been executed, funded, and reflect the statutory changes. A time difference between the effective dates of the statutory amendments and the regulations implementing those amendments will result in operating confusion with possible disruption of services to the public. Therefore, for good cause found, the effective date of these final regulations has been established as October 1, 1983.

Additional actions related to these rules are anticipated as follows:

1. 20 CFR Part 601 will be amended to clarify that it will govern administrative procedures associated only with State unemployment insurance program operations.

2. Regulations governing services to veterans, especially disabled and Vietnam-era veterans, provided in accordance with 38 U.S.C. Chapters 41 and 42 will be revised. A notice of proposed rulemaking on this matter was published on August 1, 1983 (48 FR 34866).

3. Cost reimbursement agreements will be negotiated with agencies by the Secretary of Labor pursuant to Section 7(c) of the Wagner-Peyser Act for programs and activities described, *inter alia*, in: (a) 20 CFR Parts 621, 655, and 656 (procedures for administration of the certification of permanent and temporary foreign labor), and (b) 20 CFR Parts 653, Subpart F, and 654 (special responsibilities of employment services related to agricultural worker clearance orders and housing, Defense Manpower Policy No. 4A, and Executive Order 10582 regarding the determination of areas of substantial unemployment). The regulations contained in Part 621 will be transferred to Part 655, as a new Subpart A, to effect consolidation of regulations governing certification of temporary foreign labor.

As a general policy, OMB Circulars apply to Wagner-Peyser grants. OMB Circular A-102 codified in 41 CFR 29-70, and OMB Circular A-87 codified in 41 CFR 1-15.7, will govern Wagner-Peyser grant administration and cost determination. In the event of a conflict between a requirement of the regulations at Part 652 and any requirement of 41 CFR Part 29-70 or 41 CFR 1-15.7, the Part 652 regulations shall govern. These regulations provide a limited exception to 41 CFR 1-15.7 for fringe benefit and retirement plans. This exception provides a transition period for State Employment Security Agencies to bring their employees' fringe benefit and retirement plans into conformity with 41 CFR 1-15.7.

Proposed rulemaking governing the Wagner-Peyser amendments was published in the **Federal Register** on July 25, 1983 (48 FR 33832), for public comment. The Department received 21 written comments.

Scope and Purpose

Several commentators suggested that the statement of scope and purpose of § 652.2 specify additional responsibilities of the system for assuring that those who seek its services are legally qualified to do so. Section 652.2 sets forth minimum requirements to establish the system's basic scope, purpose, and elements. Although the Department believes that the State agencies will engage in some screening activity, it does not believe that the Federal Government should require the State agencies to be the guarantors of the employability of persons referred to employers. Therefore, the proposed revision was not made.

Basic Labor Exchange System

It was suggested that the specification of the basic labor exchange system at § 652.3 also provide enhanced coordination between the labor exchange and unemployment compensation systems. Section 7(a)(3)(F) of the Act provides that Wagner-Peyser funds may be used for administering the work test for the State unemployment compensation system. This section is implemented in the regulations at § 652.3(e). Given that § 652.3 establishes minimum capacities, the Department believes the regulations adequately provide for the minimum requirements of coordination between the labor exchange and unemployment compensation system. Thus, no change has been made.

Notice of Within-State Resource Distributions

Several comments suggested the deletion of the requirement at § 652.4(a) that the State make public the substate resource distributions and the procedures by which these resources will be issued, planned, and committed. The commentators viewed these requirements as going beyond the requirements of the Wagner-Peyser amendments. Section 8 of the Act grants to the Secretary the authority to approve or disapprove State plans. This authority, read in conjunction with the Secretary's rulemaking authority (Section 12), at least implicitly authorizes the Secretary to require the publication of substate resource distributions. By requiring public notice of the substate resource distributions and the procedures relating to them, the Secretary assures broad awareness of and participation in the decisions affecting how employment services will be delivered. Accordingly, no change has been made in this requirement.

Appeals of Substate Resource Distribution

Several commentators suggested deleting the required appeals process at § 652.4(a) pertaining to intrastate resource distribution complaints. The commentators expressed the concern that such an appeals process would be costly and would delay the planning and implementation of employment services. By requiring a process for resolving complaints, the Secretary is providing an opportunity for resolution of disagreements over resource distribution. Section 8(b)(5) of the Act anticipates intrastate disagreements on State plans and provides that the Secretary will ultimately decide such disputes. With respect to resource distribution disputes, however, the Department believes the States are in the best position to resolve any disagreements. The appeal procedures secure broad participation in the planning of employment services. This section has been modified, by deletion of the word "appeals", to clarify that these processes need not be burdensome or unduly time-consuming.

Grant Agreement

Commentators also requested elimination of the proposed Governor/Secretary agreement described at § 652.4(b). Because such an agreement is a prerequisite to a continuing funding relationship between the State and Department, this provision was retained.

State Planning Process

Section 652.6(a) describes the State planning process. Commentators suggested deletion of the requirement that the State agency plan be submitted "through the Governor". Because Section 8(c) of the Wagner-Peyser Act, as amended, requires that the Governor be given the opportunity to comment on the State agency plan and to propose modifications to it, and to assure that the Secretary's review for the purposes of Section 8(e) of the Wagner-Peyser Act is timely, the requirement that the plan be submitted through the Governor has been retained.

Deletion was also suggested for the requirement that the plans include assurances that other recipients of funds under the Wagner-Peyser Act comply with the Act and applicable law, rules and regulations. In response to this comment, § 652.6 has been revised to limit these assurances to subrecipients of the State agency. This limitation is necessary because it would be unfair to hold State agencies responsible for the acts of other direct Wagner-Peyser fund recipients.

The proposed regulations provided, at § 652.6(c), that the plan relating to the funds reserved pursuant to section 7(b) of the Wagner-Peyser Act could be a separate component of the State agency plan or submitted separately, timed to coincide with the submission of the State agency plan to the Secretary. It was suggested that the plan for these funds should be included as part of the State agency plan only, without the option of a separate submission. At their discretion, the Governors may choose various approaches to planning the utilization of funds reserved for their use by 7(b) of the Wagner-Peyser Act that would not necessarily be consistent with a requirement that the plans for this set-aside be included in the State agency submission. Accordingly, to provide the Governors with necessary flexibility, this provision was not revised.

Review and Approval of Plans

Section 652.7 of the proposed regulations describes the review and approval of plans. Commentators suggested that this section be expanded to provide for the submission of revised plans if the Secretary disapproves the plan originally submitted. Subsection (c) of this section has been revised to provide the State agency thirty (30) days to submit a revised plan responsive to the Secretary's reasons for disapproval. If the Secretary continues to disapprove the plan at the end of that period, the appeals procedures at 20 CFR 658.707–711 are available to the State agency.

It was also suggested that, if an alternative to the State agency plan has been submitted pursuant either to section 8(b)(5) or section 8(c) of the Wagner-Peyser Act, the State agency submission be approved by the Secretary, except where the State agency submission was not in conformity with the Act or not reasonably appropriate and adequate to carry out the purposes of the Act. The final regulation retains the provisions of the proposal at § 652.7(b). In reviewing alternatives to the State agency plan, the Secretary shall first assure that all proposals conform to the requirements of applicable law and regulation and that they are reasonably appropriate and adequate to achieve the purposes of the Act. To constrain the Secretary's authority beyond these criteria, as suggested by the commentators, would deny the Secretary the latitude necessary to discharge his responsibilities in approving plans submitted under the Wagner-Peyser Act.

Administrative Provisions

Section 652.8 of the proposed regulations describe the administrative provisions governing programs under the Wagner-Peyser Act. Commentators suggested that this section be expanded to include references to section 13 of the Act with respect to referrals to private agencies and the use of Wagner-Peyser funds to pay for advertising in newspapers for high paying jobs. In this instance, Section 13 is explicit and warrants no additional explanation or interpretation. Therefore, the suggested expansion of the regulation was not adopted.

Commentators requested that the reporting requirements be described in fuller detail and made available for public comment prior to adoption. While the detailed reporting requirements (e.g., the specific data elements and formats) are not specified in the final regulation, it is the Secretary's intention that these requirements will be made available for review and comment prior to final adoption.

One commentator requested modification of § 652.8(d)(5) to require the retention of job orders for two years, rather than one as in the proposed regulation. The Department believes that the one year retention period is sufficient for it to meet its monitoring and enforcement responsibilities under the Act. For this reason, the regulation remains as proposed.

Commentators suggested that the regulations should authorize State agencies to charge for the incremental costs associated with providing information pursuant to Section 3(b) of the Wagner-Peyser Act as amended. Although such a change was not made in the final regulation, it is noted that nothing in the Wagner-Peyser Act, nor its implementing regulations, precludes State agencies from imposing reasonable charges for the extraordinary costs associated with fulfilling such requests.

Several commentators requested modifications of the proposed audits and sanctions regulations (cf., §§ 652.8 (f) and (g), respectively). The Secretary is charged with assuring that funds appropriated under the Wagner-Peyser Act, as amended, are expended responsibly and in conformity with applicable law and regulations. Accordingly, these sections of the final regulation were retained as proposed. One comment suggested changing the audit cycle for the funds reserved under Section 7(b) of the Act from annually to once every two years. Because the concept of set-aside in Section 7(b) is

new, however, the Department needs to retain close oversight. Therefore, the provision remains unchanged. Another commentator requested a specific definition of the amount of cash maintained that would constitute an "excess of reasonable grant needs." Due to the fact that the size of grants varies greatly, a precise definition is not feasible. Thus, this provision was retained as proposed. In addition, one comment suggested making the offsetting of debts the preferred means of settlement. The regulations, however, do not provide for any preference among the sanctions. The Secretary retains the discretion, based on the facts and circumstances of each case, to fashion the appropriate sanction to each individual situation. Therefore, the suggestion that there be a preference among sanctions was not accepted.

Nondiscrimination and Affirmative Action Requirements

Commentators suggested combining all nondiscrimination and affirmative action requirements in one section. Accordingly, § 652.8(a)(2) was moved to § 652.8(j).

It was also suggested that § 652.8(j)(3) be revised by requiring the State agency to "make every effort" to assure the referral of a significant number of qualified applicants from target groups when employers file valid affirmative action requests with the agency. Because of the importance of employment services in matching employers and jobseekers, particularly in instances were employers are seeking to fulfill valid affirmative action obligations, this section was retained as proposed.

Cost Reimbursement Agreements

One commentator suggested that the cost reimbursement funding agreements might result in inadequate enforcement of housing standards and the temporary alien labor certification process. Although the Act does not require that the State agencies perform these activities, the Department is committed to diligent enforcement of housing standards and the operation of a temporary alien labor certification program. Section 7(c) of the Act states that service and activities not otherwise authorized by the Wagner-Peyser Act may be provided through separate agreements and funding, and the Department believes that through the use of cost reimbursement funding, it will meet its obligation under the *NAACP* v. *Marshall* settlement agreement.

Retention of Regulations

As noted above, these regulations replace, in whole or part, several parts of the Code of Federal Regulations. Commentators suggested the retention of several sections of the current regulations, including: those prescribing a "Job Service logo"; those provisions relating to the payment of postage for State agency mailings; those detailing coordination of the activities of State unemployment compensation and employment service systems; and those dealing with the confidentiality of records. The Department believes States should be permitted to work out these administrative details, thereby reducing the Federal presence in the administration and management of States agency activities consistent with the thrust of the Wagner-Peyser Amendments. Accordingly, they have not been retained.

It was suggested that the regulations be extended to include requirements for a merit system of personnel administration. The final regulations have not been revised to include this requirement; however, it is noted that nothing in the Wagner-Peyser Act, as amended, or the final regulations inhibits or discourages the States from utilizing merit systems for personnel administration.

Commentators suggested that the regulation make clear that neither the Department nor the State guarantee the accuracy or truthfulness of information provided by jobseekers or employers. Because this information is provided voluntarily, these agencies cannot take responsibility for verifying its accuracy. A statement to this effect was added at § 652.8(d).

It was also suggested that the regulations provide an inventory of all legislation, regulations or other directives (e.g., Executive Orders) that relate to the employment service or the activities provided by it. Although this recommendation was not adopted in the final regulation, the Department, through its continuing technical assistance, will provide information of this type and keep it current in a way that would not be possible were these materials to be incorporated in the regulations.

Referrals Involving Labor Disputes

As proposed, the regulation did not provide guidance with respect to Section 11(b) of the Act. This section provides that "(i)n carrying out the provisions of this Act the Secretary is authorized and directed to provide for the giving of notice of strikes and lockouts to applicants before they are referred to employment".

Commentators representing workers and State agency personnel questioned the omission of a regulation implementing section 11(b) of the Act. In response to these comments, the final regulation now includes, at § 652.9, a restatement of the regulation formerly set forth at 20 CFR 653.8 concerning the referral of applicants to job openings affected by labor disputes involving strikes or lockouts.

Regulatory Changes by Section

In § 652.4(a), the word "appeals" has been deleted to clarify that, while a complaint resolution process is necessary, it need not be burdensome or unduly time-consuming.

In § 652.7(c), the procedures relating to the disapproval of a State agency plan have been revised to allow the State agency thirty (30) days to revise the plan in response to the Secretary's notice of disapproval. If at the end of the thirty (30) day period the Secretary continues to disapprove the plan, the State agency may appeal that determination in accordance with the procedures set forth at 20 CFR 658.707–711.

The provisions of § 652.8(a)(2) in the proposed regulations have been redesignated § 652.8(j)(5) and moved accordingly. This consolidates all nondiscrimination and affirmative action requirements.

In § 652.8(d), a new paragraph has been added to clarify that neither the Department nor the States are guarantors of information provided voluntarily by jobseekers or employers using the labor exchange services authorized by the Wagner-Peyser Act, as amended. The remaining paragraphs of § 652.8(d) were renumbered accordingly.

In § 652.9, language has been added relating to the giving of notice and making referrals, where a strike or lockout exists.

In other places, language of the proposed regulation was changed for greater clarity.

Rulemaking Certifications

The proposed rules are procedural in character and give direction to States on the implementation of programs under the Wagner-Peyser Act. Therefore, these rules are not classified as "major" under Executive Order 12291 on Federal regulations, and no regulatory impact analysis is required.

The Department has determined that these rules will have no "significant economic impact upon a substantial number of small entities" within the meaning of Section 3(a) of the

Regulatory Flexibility Act, Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The only direct recipients of Federal funds under these regulations are the Governors and/or designated State agencies.

Paperwork Reduction Act

Information collection, within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), is required by the rules at §§ 652.4, 652.6, and 652.7. The Office of Management and Budget (OMB) has approved these information collection requirements and has assigned OMB control number 1205-0209. In addition, the Department will submit to OMB for its review and approval the planned reporting requirements as authorized under 20 CFR 652.8(c).

List of Subjects in 20 CFR Parts 602, 603, 604, 651, 652, and 653

Grant programs—labor, Employment.

Accordingly, Chapter V of Title 20 of the Code of Federal Regulations is amended as follows:

PART 602—FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM—[REMOVED]

1. The authority for Part 602 reads as follows:

Authority: Sec. 12, 48 Stat. 117, as amended; Secs. 1-13, 48 Stat. 113, as amended; secs. 2010-2014, 72 Stat. 1221; 29 U.S.C. 49-49 1; 38 U.S.C. 2010-2014.

2. Part 602 is removed.

PART 603—STATE PROGRAM BUDGET PLANS UNDER THE WAGNER-PEYSER ACT—[REMOVED]

3. The authority for Part 603 reads as follows:

Authority: Sec. 12, 48 Stat. 117, as amended; Secs. 1-13, 48 Stat. 113, as amended; secs. 2010-2014, 72 Stat. 1221; 29 U.S.C. 49-49 1; 38 U.S.C. 2010-2014.

4. Part 603 is removed.

PART 604—POLICIES OF THE UNITED STATES EMPLOYMENT SERVICE—[REMOVED]

5. The authority for Part 604 reads as follows:

Authority: Sec. 12, 48 Stat. 117, as amended; Secs. 1-13, 48 Stat. 113, as amended; secs. 2010-2014, 72 Stat. 1221; 29 U.S.C. 49-49 1; 38 U.S.C. 2010-2014.

6. Part 604 is removed.

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

7. The authority for Part 651 reads as follows:

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301; and 38 U.S.C. Chs. 41 and 42.

§§ 651.1—651.9 [Removed]

8. Part 651 is amended by removing §§ 651.1 through 651.9.

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

9. The authority for Part 653 reads as follows:

Authority: 38 U.S.C. Chs. 41 and 42; Wagner-Peyser Act, as amended, 29 U.S.C. 49 et seq.; Sec. 104 of the Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. 93-567, 88 Stat. 1845.

§§ 653.1—653.13 [Removed]

10. Part 653 is amended by removing §§ 653.1 through 653.13 which constitutes Subpart A.

§§ 653.400—653.409 [Removed]

11. Part 653 is amended by removing §§ 653.400 through 653.409 which constitutes Subpart E.

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICES

12. Part 652 is amended by revising its title to read as set forth above.

13. Part 652 is amended by adding text to read as follows:

Sec.
652.1 Introduction and definitions.
652.2 Scope and Purpose of the employment service system.
652.3 Basic labor exchange system.
652.4 Allotment of funds and grant agreement.
652.5 Services authorized.
652.6 State planning process and plan.
652.7 Review and approval of plans.
652.8 Administrative provisions.
652.9 Labor disputes.

Authority: Wagner-Peyser Act, 29 U.S.C. 49 et seq.

§ 652.1 Introduction and definitions.

(a) These regulations implement the provisions of the Wagner-Peyser Act, as amended by the Job Training Partnership Act (JTPA), known hereafter as the Act. Congress intended that the States exercise broad authority in implementing the provisions of the Act.

(b) Except as otherwise provided the definitions contained in Section 2 of the Act apply to these regulations.

"Act" means the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

"Department" means the United States Department of Labor (DOL), including its agencies and organizational units.

"Director" means the chief official of the United States Employment Service.

"Governor" means the chief executive of any State.

"JTPA" means the Job Training Partnership Act of 1982 (29 U.S.C. 1501 *et seq.).*

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

"State agency" means the State governmental unit designated pursuant to section 4 of the Act to cooperate with the United States Employment Service in the operation of the public employment service system.

"State Job Training Coordinating Council (SJTCC)" means the entity within a State appointed by the Governor under section 122 of the Job Training Partnership Act which reviews and certifies the employment service plan.

§ 652.2 Scope and purpose of the employment service system.

The basic purpose of the employment service system is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

§ 652.3 Basic labor exchange system.

At a minimum, each State shall administer a labor exchange system which has the capacity:

(a) To assist jobseekers in finding employment;

(b) To assist employers in filling jobs;

(c) To facilitate the match between jobseekers and employers;

(d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary pursuant to JTPA Section 462(c)(3); and

(e) To meet the work test requirements of the State unemployment compensation system.

§ 652.4 Allotment of funds and grant agreement.

(a) *Allotments.* The Secretary shall provide planning estimates in accordance with section 6(b)(5) of the Act. Within 30 days of receipt of planning estimates from the Secretary, the State shall make public the substate resource distributions, and describe the process and schedule under which these resources will be issued, planned and committed. This notification shall

include a description of the procedures by which the public may review and comment on the substate distributions, including a process by which the State will resolve any complaints.

(b) *Grant Agreement.* To establish a continuing relationship under the Act, the Governor and the Secretary shall sign a Governor/Secretary Agreement, including a statement assuring that the State shall comply with the Act and all applicable rules and regulations. Consistent with this Agreement and Section 6 of the Act, State allotments will be obligated through a Notification of Obligation.

(Approved by the Office of Management and Budget under OMB control number 1205–0209.)

§ 652.5 Services authorized.

The sums allotted to each State pursuant to Section 6 of the Act shall be expended consistent with an approved plan pursuant to § 652.7 of these regulations. At a minimum, each State shall provide the basic labor exchange elements defined at § 652.3 of these regulations.

§ 652.6 State planning process and plan.

(a) The State agency designated pursuant to Section 4 of the Act shall prepare and submit to the Secretary, through the Governor, an annual plan for providing services and activities within the State as authorized under Section 7(a) of the Act. The Secretary shall establish a date for receipt of plans by the Secretary. The plans:

(1) Shall be developed in accordance with the processes established by the State under § 652.4(a) of these regulations;

(2) Shall be consistent with Section 8 of the Act;

(3) Shall include assurances that the State agency and its subrecipients will comply with the Act and applicable law, rules and regulations; and

(4) Shall, in addition to the requirements of section 8(d) of the Act, contain a description of each of the following:

(i) The overall goals and objectives of the State agency and their relationship to the Governor's annual statement of goals and objectives pursuant to Section 121(a) of the JTPA;

(ii) The overall services to be provided by the State agency in implementation of section 7(a) of the Act, as planned pursuant to paragraph (a)(1) of this section; and

(iii) The State agency plans for meeting the requirements of a basic labor exchange system, including a description of how:

(A) Jobseekers will be assisted in finding employment;

(B) Employers will be assisted in filling jobs;

(C) The match between jobseekers and employers will be facilitated;

(D) The State will participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary pursuant to Section 462(c)(3) of JTPA; and

(E) The work test requirements of the State unemployment compensation system will be met.

(b) Plans submitted to the Secretary pursuant to section 8(b)(5) of the Act shall include:

(1) The State agency submission pursuant to paragraph (a) of this section, including the State agency's proposals for the component(s) in dispute;

(2) The alternative(s) proposed jointly by the appropriate Private Industry Councils (PIC(s)) and Chief Elected Officials (CEO(s));

(3) The SJTCC's proposed resolution; and

(4) Any comments or alternative(s) the Governor may submit relating to the disputed component(s).

(c) The Governor shall describe the use of resources set-aside pursuant to Section 7(b) of the Act. Such description may be provided:

(1) As a separate component of the State plan developed pursuant to paragraph (a) of this section; or

(2) As a separate submission to the Secretary, timed to coincide with the submission of the State plan to the Secretary.

(Approved by the Office of Management and Budget under OMB control number 1205–0209.)

§ 652.7 Review and approval of plans.

(a) Within 30 days of receipt of the plans submitted pursuant to § 652.6 of these regulations, the Secretary shall provide written notification of his determination to the Governor, the State agency and the SJTCC. Any notice of disapproval shall include an explanation of the reasons for such determination. The Secretary shall approve such plans unless:

(1) They fail to conform to a specific provision of the Act or applicable law or regulations; or

(2) The description pursuant to § 652.6(a)(4)(iii) of these regulations indicates that the services to be provided are not reasonably appropriate and adequate to achieve the requirements of a basic labor exchange system as described in § 652.3 of these regulations.

(b) Where alternative plans, or components, are submitted pursuant to sections 8(b)(5) or 8(c) of the Act, the Secretary shall, within 30 days of receipt of such plans, assure their conformity with § 652.6 of these regulations and choose one of the alternatives and thereby resolve the dispute.

(c) If the Secretary disapproves the State agency plan, pursuant to paragraph (a) of this section, the State agency shall have a thirty (30) day period to bring the plan into conformance. If, at the end of the thirty (30) day period, the Secretary continues to disapprove the plan, the State agency may appeal the determination as set forth in 20 CFR 658.707–711.

(d) The Secretary's determination pursuant to paragraph (b) of this section is final agency action.

(e) Modifications of plans already approved by the Secretary shall be developed, submitted and reviewed pursuant to §§ 652.6 and 652.7 of these regulations.

(Approved by the Office of Management and Budget under OMB control number 1205–0209.)

§ 652.8 Administrative provisions.

(a) *Administrative Requirements.* The Employment Security Manual shall not be applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this Part 652 are as specified in 41 CFR Part 29–70 and 41 CFR Part 1–15.7.

(b) *Management systems, reporting and recordkeeping.* (1) The State shall ensure that financial systems provide fiscal control and accounting procedures sufficient to permit preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended in violation of the restrictions on the use of such funds (Section 10(a)).

(2) The financial management system and the program information system shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes (Section 10(c)).

(c) *Reports Required.* (1) Each State shall make reports pursuant to instructions issued by the Secretary and in such format as the Secretary shall prescribe.

(2) The Secretary is authorized to monitor and investigate pursuant to Section 10 of the Act.

(d) *Special Administrative and Cost Provisions.* (1) Neither the Department

nor the State is a guarantor of the accuracy or truthfulness of information obtained from employers or applicants in the process of operating a labor exchange activity.

(2) Prior approval authority, as described in various sections of 41 CFR Part 29–70 and 41 CFR 1–15.7, is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 41 CFR 29–70.215. The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

(3) Application for financial assistance and modification requirements shall be as specified under this Part.

(4) Cost of promotional and informational activities consistent with the provisions of the Act, describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

(5) Each State shall retain basic documents for the minimum period specified below:

(i) Work Application: One year.

(ii) Job Order: One Year.

(6) Costs of employer contributions and expenses incurred for State agency fringe benefit plans that do not meet the requirements in 41 CFR 1–15.711–13 and 711–10 are allowable, provided that:

(i) For retirement plans, on behalf of individuals employed before the effective date of this part, the plan is authorized by State law and previously approved by the Secretary; the plan is insured by a private insurance carrier which is licensed to operate this type of plan; and any dividends or similar credits due to participation in the plan are credited against the next premium falling due under the contract;

(ii) For retirement plans on behalf of individuals employed after the effective date of this Part, and for fringe benefit plans other than retirement, the Secretary grants a time extension to cover an interim period if State legislative action is required for such employees to be covered by plans which meet the requirements of 41 CFR 1–15.711–13 and 711–10. During this interim period, State agency employees may be enrolled in plans open to State agency employees only. No such extension may continue beyond the 60th day following the completion of the next full session of the State legislature which begins after the effective date of this part;

(iii) For fringe benefit plans other than retirement, the Secretary grants a time extension which may continue until such time as they are comparable in cost to those fringe benefit plans available to other similarly employed employees of the State on the condition that there are no benefit improvements. The Secretary may grant this time extension if the State agency can demonstrate that the extension is necessary to prevent loss of benefits to current States agency employees, retireees and/or their fringe benefit plan beneficiaries, or that it is necessary to avoid unreasonable expenditures on behalf of the employee or employer to maintain such fringe benefits for current employees and retirees. At such time as the cost of these fringe benefit plans becomes equitable with those available to other similarly employed State employees, the time extension will cease and the requirements of 41 CFR 1–15.711–13 and 1–15.711–10 will apply;

(iv) Requests for time extensions under this section will include an opinion of the State Attorney General, that either legislative action is required to accomplish compliance with 41 CFR 1–15.711–13 and 1–15.711–10 or, for (d)(6)(iii) of this section that such compliance would result in either loss of current benefits to State agency employees and retirees or unreasonable expenditures to maintain these benefits. Such requests will be filed with the Secretary no later than 30 days after the effective date of this Part; and

(v) Time extensions granted relative to (d)(6)(iii) of this section require a signed statement by the State agency Administrator, that no improvements have been made to fringe benefits under the extension and that the plan(s) is (are) not consistent with those available to other similarly employed State employees, for each year of the extension. Documentation supporting the affidavit shall be maintained for audit purposes.

(7) Payments from the State's Wagner-Peyser allotment made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (Section 903(c) of the Social Security Act, as amended (42 U.S.C. 1103(c)) are allowable costs, provided that:

(i) The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State owned office building; and

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(7)(i) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act Funds used for administrative expenditures.

(e) *Disclosure of Information.* (1) The State shall assure the proper disclosure of information pursuant to Section 3(b) of the Act.

(2) The information specified in Section 3(b) and other Sections of the Act, shall also be provided to officers or any employee of the Federal Government of a State government lawfully charged with administration of unemployment compensation laws, employment service activities under the Act or other related legislation, but only for purposes reasonably necessary for the proper administration of such laws.

(f) *Audits.* (1) At least once every 2 years, the State shall prepare or have prepared an independent financial and compliance audit covering each full program year not covered in the previous audit, except that funds expended pursuant to Section 7(b) of the Act shall be audited annually.

(2) The Comptroller General and the Inspector General of the Department shall have the authority to conduct audits, evaluations or investigations necessary to meet their responsibilities under Sections 9(b)(1) and 9(b)(2), respectively, of the Act.

(3) The audit, conducted pursuant to paragraph (f)(1) or (f)(2) of this section, shall be submitted to the Secretary who shall make an initial determination. Such determinations shall be based on the requirements of the Act, regulations, and State plan.

(i) The initial determination shall identify the audit findings, state the Secretary's proposed determination of the allowability of questioned costs and activities, and provide for informal resolution of those matters in controversy contained in the initial determination.

(ii) The Secretary shall not impose sanctions and corrective actions without first providing the State with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the Secretary's initial determination. The informal resolution period shall be at least 60 days from issuance of the initial determination and no more that 170 days from the receipt by the Secretary of the final approved audit report. If the matters are resolved informally, the Secretary shall issue a final determination pursuant to paragraph (f)(3)(iii) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(iii) If the matter is not resolved informally, the Secretary shall provide each party with a final written

determination by certified mail, return receipt requested. In the case of audits, the final determination shall be issued not later than 180 days after the receipt by the Secretary of the final approved audit report. The final determination shall:

(A) Indicate that efforts to resolve informally matters contained in the initial determination have been unsuccessful;

(B) List those matters upon which the parties continue to disagree;

(C) List any modifications to the factual findings and conclusions set forth in the initial determination;

(D) Establish a debt if appropriate;

(E) Determine liability, method of restitution of funds and sanctions;

(F) Offer an opportunity for a hearing in accordance with 20 CFR 658.707 through 658.711 in the case of a final determination imposing a sanction or corrective action; and

(G) Constitute final agency action unless a hearing is requested.

(g) *Sanctions for Violation of the Act.* (1) The Secretary may impose appropriate sanctions and corrective actions for violation of the Act, regulations, or State plan, including the following:

(i) Requiring repayment, for debts owed the Government under the grant, from non-Federal funds;

(ii) Offsetting debts arising from the misexpenditure of grant funds, against amounts to which the State is or may be entitled under the Act, provided that debts arising from gross negligence or willful misuse of funds shall not be offset against future grants. When the Secretary reduces amounts allotted to the State by the amount of the misexpenditure, the debt shall be fully satisfied;

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt;

(iv) Imposing other appropriate sanctions or corrective actions, except where specifically prohibited by the Act or regulations.

(2) To impose a sanction or corrective action, the Secretary shall utilize the initial and final determination procedures outlined in (f)(3) of this section.

(h) *Other violations.* Violations or alleged violations of the Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination shall be determined and handled in accordance with 20 CFR Part 658, Subpart H.

(i) *Fraud and abuse.* Any persons having knowledge of fraud, criminal activity or other abuse shall report such information directly and immediately to the Secretary. Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately.

(j) *Nondiscrimination and Affirmative Action Requirements.* States shall:

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any services or activities authorized under the Act because of age, race, sex, color, religion, national origin, handicap, political affiliation or belief. All complaints alleging discrimination shall be filed and processed according to the procedures in 29 CFR Part 31;

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR Parts 1604, 1606, 1625.

(3) Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.

(4) Assure that employment testing programs will comply with 41 CFR Part 60–3 and 29 CFR Parts 1627 and 32.

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR Parts 31 and 32.

§ 652.9 Labor disputes.

(a) State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification shall be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies shall:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies shall resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been terminated.

(e) State agencies shall notify the regional office in writing of the existence of labor disputes which:

(1) Result in a work stoppage at an establishment involving a significant number of workers; or

(2) Involve multi-establishment employers with other establishments outside the reporting State.

Signed at Washington, D.C., this 28th day of October, 1983.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-29753 Filed 11-1-83 8:45 am]

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Wednesday
November 2, 1983

Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Glass Manufacturing Plants; Grant and Denial of Petitions for Reconsideration and Proposal of Amendments to Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1907-7]

Standards of Performance for New Stationary Sources; Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Grant and denial of petitions for reconsideration and proposal of amendments to rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting petitions for reconsideration of certain aspects of the air pollutant control standards of performance for glass manufacturing plants and is proposing appropriate amendments. After the current standards of performance were promulgated in October 1980, several glass manufacturers petitioned EPA to reconsider the standards. After reviewing these petitions, EPA decided to convene a proceeding to reconsider several aspects of the standards. Consequently, EPA is proposing, among other changes, emission limits for glass melting furnances which effectively reduce emissions through the use of modified processes. As to certain issues, EPA is denying the petitions to reconsider.

DATES: To the extent that the petitions to reconsider are denied, the denials are a final action under Sections 307(d)(7)(B) and 307(b)(1) of the Clean Air Act. Review of the denials is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication, as provided in Section 307(b)(1).

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 21, 1983, a public hearing will be held on December 5, 1983 beginning at 9:00 a.m. Persons interested in attending the hearing should call Mrs. Pat Finch at (919) 541–5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by November 25, 1983.

Comments. Comments must be received by January 4, 1984

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (LE–131), Attention: Docket No. OAQPS–79–2, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. If a public hearing is held (see *DATES: Public Hearing.*), the public hearing will be held at the Environmental Research Center Auditorium, Corner of Hwy 54 & Alexander Drive, Research Triangle Part, N.C. Persons interested in attending the hearing should call Mrs. Pat Finch at (919) 541–5578 to verify that a hearing will occur.

Persons wishing to present oral testimony should notify Mrs. Pat Finch, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

Docket. The docket, No. OAQPS–79–2, containing supporting information used in developing the proposed revision is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M. Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying

Background Information Documents. The background information documents (BID's) for the current standards may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "Glass Manufacturing Plants, Background Information: Proposed Standards of Performance," EPA–450/3–79–005a (NTIS PB 298528) and "Glass Manufacturing Plants: Background Information for Promulgated Standards of Performance," EPA–450/3–79–005b (NTIS PB81–105967).

FOR FURTHER INFORMATION CONTACT: Mr. Fred Dimmick, Standards Development Branch (MD–13), Emission Standards and Engineering Divison, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1977, the Governor of New Jersey petitioned EPA to establish standards of performance for glass manufacturing plants. The petition was primarily motivated by the Governor's concern that the glass manufacturing industry might locate plants in other States rather than comply with New Jersey's State implementation plan limiting emissions of particulate matter. On July 20, 1977 (42 FR 37213), a notice of intent to develop standards of performance for glass manufacturing plants was published in the **Federal Register** by EPA. Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (March 17, 1978, 43 FR 11259) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the glass manufacturing plant standards recommended for proposal. As a result of this meeting, several changes were made to the standards recommended for proposal.

On June 15, 1979 (44 FR 34840), EPA proposed standards of performance for glass manufacturing plants under the authority of Section 111 of the Clean Air Act. Glass manufacturing plants had been added on June 14, 1979 (44 FR 34183), to the list of categories of stationary sources which EPA judges may contribute significantly to air pollution that causes or contributes to the endangerment of public health or welfare. Public comments were requested on the proposed standards and the listing of glass manufacturing plants. After review of the public comments on the proposed standards and the listing, EPA promulgated the final standards of performance for glass manufacturing plants in the **Federal Register** on October 7, 1980 (45 FR 66742).

EPA received petitions to reconsider the final standards from PPG Industries, Inc., (PPG); the Glass Packaging Institute, their 18 member companies, 5 other glass companies, and the Glass Industry Air Quality Group (GPI *et al*); Owens-Corning Fiberglas Corporation (OCF); Libbey-Owens-Ford Company (LOF); and Ford Motor Company (Ford). After reviewing the petitions, EPA met with these petitioners as well as other glass manufacturers. As a consquence of these meetings, additional petitions and information were submitted by glass manufacturers to EPA.

Criteria for Review of the Petitions for Reconsideration

The petitioners have requested EPA for reconsideration under Section 307(d)(7)(B) of the Act. This section is limited both in time and scope. Specifically, Section 307(d)(7)(B) provides that EPA shall convene a proceeding to reconsider the rule in question if a person raising an objection can demonstrate that: (1) It was impracticable to raise such objection during the comment period or that the grounds for such objection arose after the comment period but within the time specified for judicial review [which EPA concludes means within the 60-day time period provided for judicial review under section 307(b), 42 U.S.C. 7607(b)(1)]; and (2) such objection is of

central relevance to the outcome of the rule. In EPA's view, such objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. *See:* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653, 81654 (Dec. 11, 1980), and decisions cited therein.

Other petitions for reconsideration were filed in part under the Administrative Procedure Act instead of Section 307(d)(7)(B). The criteria for evaluating those petitions are essentially the same as for the Section 307(d)(7)(B) petitions. *See:* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653.

Summary of Petitions and Responses

As noted above, petitions for reconsideration were submitted by PPG Industries, Incorporated, the Glass Packaging Institute *et al.*, Owens-Corning Fiberglas Corporation, Libbey-Owens-Ford Company, and Ford Motor Company. These petitions raised the following issues: (1) The significance of glass manufacturing plants as a cause or contributor to air pollution, (2) the reasonableness of the cost of the standards as the standards affect glass melting furnaces which effectively control emissions using modified processes, (3) the rescinding of the standard for textile fiberglass until evidence exists in the record to support an achievable standard, (4) the reasonableness of the economic impact of the standards on research (experimental) glass melting furnaces, and (5) the inclusion of forming (flow) channels in the definition of "glass melting furnace" insofar as that definition applies to wool fiberglass and textile fiberglass furnaces, (6) the achievability of the flat glass manufacturing plant standard, and (7) other general issues.

After reviewing the petitions, acquiring additional information, and meeting with the glass manufacturers for additional clarification of the issues, EPA reached the following decisions:

(1) With regard to the significance of glass manufacturing plants, EPA has found that even though new data and information may be available, the objection raised by this new data and information is not of central relevance to the outcome of this issue, and, therefore, EPA has denied reconsideration of this issue.

(2) With regard to the reasonableness of the cost of the standards as they affect furnaces which effectively control emissions using modified processes, EPA believes that it is appropriate to reconsider the standards with respect to this issue. EPA agrees that to the extent modified processes are effective in continuously reducing emissions, this should be considered in establishing these standards and, therefore, is proposing to revise the standards to allow glass melting furnaces which effectively reduce emissions using modified processes to avoid the cost of add-on control devices. Furnaces using modified processes have operational characteristics which make them more desirable than conventional furnaces; reduce particulate emissions as a result of the modified design with costs considerably less than the costs of add-on controls; and , in addition, reduce emissions of sulfur dioxides (SO_x) and nitrogen oxides (NO_x) for little or no costs.

(3) With regard to OCF's request to rescind the standard for textile fiberglass until there exists evidence in the record to support an achievable standard, evidence in the docket at promulgation and the rationale for the standard support the achievability of the standard by textile fiberglass plants. Nevertheless, due to uncertainty about the adequacy of this information EPA believes that it is appropriate to reconsider the achievability of the standard. Accordingly, EPA has obtained additional information and has reviewed this information. This information confirms the achievability of the standard. Therefore, the request by OCF to rescind the textile fiberglass standard is denied.

(4) With regard to the reasonableness of the economic impact of the standards on research (experimental) glass melting furnaces, EPA has determined that reconsideration is appropriate. EPA has also concluded the economic impact of the standards is unreasonable for experimental furnaces and, therefore, is proposing to exempt experimental glass melting furnaces from the standards.

(5) With regard to the inclusion of forming (flow) channels in the definition of "glass melting furnace" insofar as that definition applies to wool fiberglass and textile fiberglass furnaces, EPA has found that there is no basis in the record for limiting emissions from the flow channels. Therefore, reconsideration is appropriate and forming (flow) channels should be excluded from the definition of "glass melting furnace" as that definition applies to wool and textile fiberglass furnaces. This exclusion is applicable only if the forming (flow) channels consititute a completely and permanently separate source of emissions from the rest of the furnace such that there is no mixing of emissions prior to their being vented to the atmosphere. EPA is, therefore, proposing to change the standards accordingly.

(6) With regard to the achievability of the flat glass manufacturing plant standard, EPA has concluded that the petitioners have not presented any new information to refute evidence in the record that an emission level of 0.225 grams of particulate per kilogram of glass produced (g/kg) is achievable. Add-on controls are currently being used to control particulate emissions from flat glass melting furnaces at two or more locations in the United States. Information in the docket shows that add-on control devices can effectively control particulate emission to the level of the promulgated standard without substantial adverse economic impact. Therefore, EPA has denied the petitioners' request to reconsider and, consequently, withdraw the standard for flat glass manufacturing plants.

(7) Three other significant issues were raised during discussions between the petitioners and EPA. The Glass Packaging Institute (GPI) requested a change in the definition of certain types of glass. Some of the petitioners requested that the applicability date of the current standards be withdrawn. Finally, GPI requested an exemption from the numerical emission limits during periods of add-on control device maintenance.

With regard to a change in the definition of certain types of glass, EPA finds that GPI's suggestion to use glass "family" (i.e., glass composition) reasonable for defining three major glass types (soda-lime, lead, and borosilicate) is convening a proceeding to reconsider this issue, and is proposing to change the standards. With regard to withdrawal of the applicability date, EPA considers this inconsistent with the language and purposes of the Clean Air Act, and therfore denies this request. With regard to the exemption from the numerical emission limits during periods of add-on control device maintenance, EPA finds that such an exemption may be required by some glass manufacturers in certain situations, is convening a proceeding to reconsider this issue, and is proposing to change the standards.

Petitions and Responses

Significance of Source Category

Issue and Response. GPI *et al.* petitioned EPA to reconsider EPA's determination that glass manufacturing plants "cause [ ], or contribute [ ] significantly to, air pollution which may be reasonably anticipated to endanger public health or welfare." Section

111(b)(1)(A). Hereafter, this determination is stated as "glass manufacturing plants are significant contributors to air pollution." Other petitioners joined GPI *et al.* in this issue. Specifically challenged by GPI *et al.* were EPA's alleged incorrect use of several factors, including industry growth projections, in making the determination that glass manufacturing plants are significant contributors to air pollution.

After review of the petitions, EPA has determined that the only new information relative to this issue is the industry growth projections presented by GPI *et al.* This information raises an objection to the determination that glass manufacturing plants are significant contributors to air pollution. The new growth rates indicate less new plant growth than that used in making the determination. EPA does not consider this objection to be of central relevance to determining whether glass manufacturing plants are significant contributors to air pollution. EPA believes that any major industrial source category with potential emission rates of the magnitude associated with glass manufacturing plants and with projected new plant growth is appropriately considered a significant contributor to air pollution and is appropriately regulated under Section 111. Therefore, EPA is denying the petition to reconsider this issue. As discussed in more detail below, EPA carefully reviewed the data submitted by the petitioners, but EPA believes the importance of the new data and information is vastly overstated by the petitioners and does not warrant a reconsideration of the initial determination in June 1979 that glass manufacturing plants are significant contributors to air pollution.

Discussion of Response. This issue concerns the propriety of EPA's determination that glass manufacturing plants are significant contributors to air pollution. In their petition, GPI *et al.* stated that EPA relied heavily on its industry growth projections to justify the decision to regulate. The petitioners went on to assert that EPA could not justify a determination that glass manufacturing plants are significant contributors to air pollution after considering the new information and data submitted in their December 5, 1980, petition concerning growth rates.

In addressing this issue, a review was made of the factors considered in determining whether glass manufacturing plants are significant sources of air pollution and, in particular, the relationship of the new data and information concerning growth rate projections to this determination. Industry growth projections are an element of an impact analysis which enables EPA to estimate, as accurately as possible, the nationwide increase in emissions attributable to a particular category of air pollutant sources.[1] In the case of glass manufacturing plants, a detailed study was conducted prior to the proposal of the standards and was presented in Chapter 7 of EPA 450/3–79–055a to provide an accurate profile of the industry's growth potential. Container glass production annual growth rate was estimated to be approximately 3.1 percent at the time of the initial study, and wool fiberglass production annual growth rate was estimated to be approximately 7.1 percent. Based on these predictions, it was estimated that 25 container glass furnaces operating at 250 tons per day and 6 wool fiberglass furnaces operating at 200 tons per day would become affected facilities.

The petitioners dispute the estimated growth rates and the predicted numbers of affected facilities estimated to commence construction over the span of the 5-year regulatory period used as the basis for comparison of impacts. GPI *et al.* estimates show that up to six container glass furnaces and fewer than six wool fiberglass furnaces will become affected facilities. They conclude that these newly available growth data indicate that the beneficial impacts associated with the promulgated standards are greatly exaggerated. Based on these considerations, the petitioners conclude that if the EPA had the newer, more accurate growth rates, it would not determine that glass manufacturing plants contribute significantly to air pollution.

EPA reviewed this new information. In most respects, EPA's review showed that the growth rate data of GPI *et al.* for the container glass category were accurate and well-supported. In contrast, the unquantified assertion that the number of affected facilities in the wool fiberglass category should be projected to be substantially fewer than that used by EPA does not appear to be justified.

Next, EPA evaluated the GPI *et al.* conclusion that the EPA could not justify a determination that glass manufacturing plants are significant contributors to air pollution based on the new information and data on estimated growth rates. The new information and data clearly show that new glass manufacturing plants will be affected by these standards even in this period of low economic growth. With respect to the determination that glass manufacturing plants are significant contributors to air pollution, this evaluation only indicates that the extent to which new glass manufacturing plants are affected by the standards in the regulatory period is less than estimated before the new information and data were submitted by GPI *et al.* However, this would not lead EPA to change the determination that glass manufacturing plants are significant contributors to air pollution. EPA believes that any category of sources that have emissions of the level of glass manufacturing plants, and in which there will be a significant number of new, modified, and reconstructed sources, is a significant contributor. Thus, EPA does not believe that the objection raised by the new information and data submitted by GPI *et al.* of central relevance to the standards.

This is consistent with recent revisions to the priority list (40 CFR 60.16). As expressed in the revisions to the priority list of categories (47 FR 950) in the Administrator's judgment, Congress did not intend that source categories showing insignificant growth should be listed under the significant contributor list of Section 111(b)(1)(A) of the Act. In the context of the priority list, the Administrator considers insignificant growth to be indicated by one or no newly constructed, modified, or reconstructed plants within the next 5 years. In the context of the glass manufacturing plants standards, EPA considers the growth rate, including the new data and information associated with the container glass and wool fiberglass manufacturing industry, to be significant, and clearly in excess of the criteria used for the priority list.

[1] Expected growth is one factor considered in assessing "significance" of a source category. Other factors considered include the quantity and characteristics of emissions from that kind of source and their potential impact on public health or welfare. For example, as discussed in the preamble accompanying the proposed and promulgated standards, glass manufacturing plants were selected as a category of stationary sources that emits particulates, SO_x, and NO_x in significant enough quantities to be reasonably anticipated by EPA to endanger public health or welfare. The background information document, EPA 450/3–79–005a, includes a discussion of these air pollutants as they relate to glass manufacturing plants. In addition to being sources of criteria pollutants, glass manufacturing plants are sources of submicrometer-sized particulates. These particulates were specifically discussed at the time of promulgation as part of the health and welfare considerations which were inherent in determining that glass manufacturing plants contribute significantly to air pollution.

The petitioners did not submit any new information on these factors, and they will therefore not be further discussed.

In summary, after review and consideration of the new information and data submitted by GPI *et al.*, EPA has concluded two points. First, the growth rate evidence submitted by GPI *et al.* is new. Second and most importantly, the objection raised by the new growth rate evidence is not of central relevance to the decision to regulate glass manufacturing plants. Thus, EPA has decided that reconsideration of this issue is not warranted.

Use of Modified Processes and Consideration of Costs

Issue and Response. In their petitions, OCF and GPI *et al.* claim that glass melting furnaces using modified processes can substantially reduce particulate emissions to a level below that which was assumed by EPA in its estimates of costs and emission reductions and, in some cases, to a level that almost achieves the promulgated standards. Both petitioners also point out that modified processes are capable of reducing SO_2 and NO_x emissions, whereas add-on control devices do not necessarily reduce these emissions.

OCF indicated (1) that with respect to their gas-boosted electric furnace, it would cost approximately $350,000 per year per furnace to reduce the final increment of particulate emissions (approximately 10.5 tons per year per furnace) through the use of add-on control devices in order for the gas-boosted electric furnaces to meet the promulgated standards; (2) that these furnaces reduce SO_2 and NO_x emissions more than 95 pedrcent from uncontrolled conventional gas-fired furnace SO_2 and NO_x emission levels; and (3) that these furnaces have certain operational characteristics which make their use more desirable than conventional gas-fired furnaces. GPI *et al.* provided specific information on the performance capability of glass furnaces without add-on control devices in New Jersey and stressed at length the need to consider the relatively high cost of requiring add-on control devices to achieve any further small increment of control. GPI *et al.* had recently contacted the operators of 30 container glass furnaces and 15 pressed and blown glass furnaces in New Jersey. They found that "*no* add-on controls are being used in the operation of any container glass furnace in New Jersey—all such furnaces can meet the SIP without the use of such controls—and *less than half* of the pressed and blown furnaces surveyed require use of add-on controls." These findings are in contrast to EPA's further assumption that add-on control devices would be needed to meet the New Jersey standard of approximately 0.5 g/kg and about 1 g/kg for container and pressed and blown glass furnaces, respectively, and to EPA's assumption that the standards would thus only require more effective add-on control devices—not the imposition of add-on control devices to a furnace that would otherwise not have required such control devices. On the basis of this, OCF and GPI *et al.* argue that EPA should reconsider the reasonableness of the standards in light of the relatively high cost of add-on control devices and the small increment of emission reduction achievable beyond that which can be achieved with modified processes.

Upon receipt of these petitions, EPA reviewed and analyzed the issue and supporting information presented by OCF and GPI *et al.* EPA also requested additional information and clarification to supplement the petitions. Upon considering all the information presented by OCF and GPI *et al.*, EPA has determined that new information is available and the objection raised by this information is of central relevance to the outcome of the standards. To the extent that modified processes are effective in continuously reducing emissions, this should be considered in establishing these standards. Accordingly, EPA is convening a proceeding to reconsider the standards by proposing to revise the standards to allow glass melting furnaces which effectively reduce emissions using modified processes to avoid the high cost of add-on control devices.

Discussion of Response. In the initial development of the standards, EPA determined from available information that modified processes were not adequately demonstrated to serve as the sole basis for the standards and that emission reduction by modified processes were uncertain with respect to the effectiveness of the technique, in terms of the amount and the continuity of emission reduction. Because of this uncertainty, EPA based the proposed standards of performance on add-on control devices of known and proven effectiveness.

Prior to the promulgation of the final standards, EPA received many comments which favored the use of modified processes as a method of reducing particulate emissions from glass melting furnaces as the basis for the standards of performance. During this comment period, additional information concerning modified processes was provided to EPA. After reviewing the comments and information, EPA determined that particulate emission reduction by modified processes was still uncertain, that modified processes may be applied intermittently, and, consequently, that modified processes were not an adequately demonstrated means of continuous emission reduction. Thus, modified processes could not necessarily be applied in all instances to effectively reduce emissions. Therefore, EPA based the final standards on add-on control devices of known and proven effectiveness.

After promulgation, EPA received the petitions from OCF and GPI *et al.* which provided new information concerning modified processes. OCF, for example, presented new information which showed the use of a specific, commercially proven modified process (i.e., gas-boosted electric furnace) achieving substantial particulate emission reduction, as well as substantial SO_2 and NO_x emission reduction. EPA considered setting standards based only on use of modified processes. However, EPA continues to believe that modified processes are not an adequately demonstrated means of emission reduction which could necessarily be applied effectively in all instances. The effectiveness of modified processes depends, in part, on the amount of experience a particular company has had with modified processes. In the flat glass category, emissions that result from plants using modified processes range from about 0.3 g/kg for one company to about 0.65 g/kg for another company. These values indicate considerable uncertainty about the capability of modified processes. Because of this uncertainty, EPA does not have an adequate basis upon which to develop standards of performance based only on modified processes. Nevertheless, EPA recognizes that in certain instances modified processes may be capable of substantial particulate, as well as SO_2 and NO_x, emission reduction.

While evaluating the use of modified processes, EPA considered withdrawal of the existing standards. However, withdrawal of the standards would perpetuate the situation which motivated the State of New Jersey to request the standards. This option was, therefore, rejected.

EPA proposes to establish separate standards for a class of sources that can effectively and continously reduce these emissions without the use of add-on control devices. The emission limits being proposed for this class of sources reflect performance that has been achieved by a number of these sources and are expected to be achievable by

most new sources. Even though additional particulate emissions reduction is possible with add-on control devices, the cost of these add-on control devices is considered exorbitant for modified processes meeting the proposed emission limits, considering the relatively small incremental emission reduction which would result. Accordingly, the emission limits being proposed today are judged by EPA to reflect the best technological system of emission reduction (considering cost) for glass melting furnaces using effective modified processes. That is, the standards (at proposed 40 CFR 60.293) are new source performance standards (NSPS) for glass melting furnaces using effective modified processes. Sections 169(3) and 171(3) of the Clean Air Act define the emission control requirements "best available control technology" and "lowest achievable emission rate," respectively. Each of these requirements is defined to be at least as stringent as an "applicable" NSPS. Under today's proposed amendments, a furnace that met the requirements of § 60.293 would not be subject to § 60.292. The "applicable" NSPS for such a furnace for the purposes of Sections 169(3) and 171(3), would therefore include § 60.293 but not § 60.292. It is understood that some glass melting furnaces may not be successful in meeting the proposed emission limits for this class of sources. For such individual sources, add-on control devices are considered to reflect the best technological system of emission reduction (considering cost) and the emission limits previously promulgated remain in effect for such sources.

In selecting the emission limit for modified processes, EPA reviewed the petitions from OCF and GPI *et al.* In the February 4, 1981, petition, data for OCF's Mark VII furnace (a gas-boosted electric furnace) indicate that a particulate emission limit of 0.5 g/kg based on test result using EPA Reference Method 5 set at a filter box temperature of 121°C (250°F) (hereafter, Method 5 at 121°C) can be achieved. (See docket reference VI–A–1.) GPI *et al.* in their February 6, 1981, petition stated that all container glass melting furnaces by using modified processes alone can achieve the level associated with the SIP characterized as typical by EPA, that is, less than 0.5 g/kg. (See docket reference VI–A–2.) GPI *et al.* specifically cited a recent survey of more than 30 glass manufacturers within the State of New Jersey. Recent test results for two new glass melting furnaces using modified processes at a container glass plant in Missouri show that these furnaces have achieved an emission rate of 0.4 g/kg with Method 5 at 121°C. (See docket reference VI–D–10.) OCF and GPI *et al.* noted that glass furnaces using modified processes to control particulate emissions reduce SO_2 and NO_x emissions below uncontrolled emission levels. Based on this review of the petitions, EPA selected an emission limit of 0.5 g/kg with Method 5 at 121°C for the container glass manufacturing plant category and the wool fiberglass manufacturing plant category.

A similar review was undertaken to establish standards for modified processes in other glass type categories. Test results on two flat glass plants show that these plants have achieved an emission rate of 0.35 g/kg with Method 5 at 121°C. (See docket reference IV–D–2B.) Other flat glass manufacturers have also been successful in reducing furnace particulate emissions by using modified processes. A flat glass plant in Texas has achieved an emission rate of approximately 0.35 g/kg. (See docket reference VI–C–20.) A flat glass plant in New Jersey has initiated a project to achieve, using modified processes, the State particulate standard for its glass melting furnace at design production rate. (See docket reference VI–C–9.) Based on this information EPA concluded that most major flat glass manufacturers using modified processes have the capability to achieve a 0.5 g/kg emission limit. EPA, therefore, selected 0.5 g/kg as the proposed emission limit for flat glass manufacturing plants using modified processes.

With regard to the pressed and blown glass manufacturing plant category, new information was provided concerning the operation of glass melting furnaces using modified processes to produce borosilicate glass, soda-lime glass, and textile fiberglass. One major manufacturer of bososilicate glass reported it has operated several glass melting furnaces using modified processes to consistently achieve a particulate emission level of 1.0 g/kg or less. (See docket reference VI–A–21.) GPI *et al.* in their February 6, 1981, petition stated that one-half of the 15 pressed and blown glass plants in New Jersey which GPI surveyed could achieve the SIP characterized as typical by EPA using modified processes alone. (See docket reference VI–A–2, p. 29.) In addition, the docket includes material which indicates that some pressed and blown glass plants producing soda-lime glass may achieve emission levels as low as 0.25 g/kg with Method 5 at 121°C. (See docket reference IV–D–21.) In supplemental material to their petition, OCF stated that it has adapted its Mark VII furnace technology to textile fiberglass production. One commercial textile fiberglass melting furnace using Mark VII furnace technology has continuously achieved an emission level less than 0.5 g/kg. (See docket reference VI–A–15). Taking this information into consideration and based on its best judgment, EPA has concluded that separate emission limits are appropriate for pressed and blown glass plants producing borosilicate glass, soda-lime glass, or textile fiberglass using modified processes. Therefore, for the press and blown glass manufacturing plant category, EPA selected an emission limit of 1.0 g/kg for borosilicate glass melting furnaces using modified processes, and an emission limit of 0.5 g/kg for soda-lime and textile fiberglass furnaces using modified processes.

Others Issues Concerning Standards for Modified Processes. In the decision to propose standards for modified processes, several other issues were considered by EPA. These issues concerned a fuel oil increment, the appropriate filter box temperature for use in EPA Reference Method 5, and ensuring continuous compliance with the standards.

Issue 1: Choice of Fuel. The proposed standards for furnaces using modified processes apply to both gas-fired and oil-fired furnaces. That is, furnaces that fire natural gas, fuel oil, or a combination of gas and oil may comply with standards for furnaces using modified processes. Most of the information on modified processes concerns gas-fired furnaces. However, some of the information concerns oil-fired furnaces. This information indicates that glass melting furnaces using modified processes and firing fuel oil have the capability to achieve the proposed standards for modified processes.

Selection of the type of fule burned in furnaces using modified processes is an integral component of modified process techniques. Consequently, additional particulates that might be generated by firing fuel oil can be compensated by modified process techniques. Because the information used to select the proposed standards includes processes using fuel oil and contains data which are substantially less than the proposed standards, the proposed standards do not contain an oil firing increment for glass melting furnaces using modified processes.

Issue 2: Filter Box Temperature. Glass industry representatives suggested that Method 5 be used with a sampling temperature of 177°C (350°F) to determine compliance with the emission

limits for furnaces using modified processes. This is suggested by industry to eliminate the effects of sulfuric acid on sampling of particulates. EPA agrees, in part, with this suggestion and therefore is proposing a maximum sampling temperature at 177°C (above the dew point of condensible acid gases) for furnaces using modified processes and firing a fuel containing more than 0.5 percent sulfur. However, it is neither necessary nor appropriate to do so for furnaces using modified processes and firing a fuel containing less than 0.5 percent sulfur.

Several points support this conclusion. First, essentially all data on furnaces using modified processes were collected at a sampling temperature of about 121°C (250°F). Owners and operators of furnaces using modified processes thus have data to predict the relationship between process operating parameters and emission rates at this temperature. More importantly, since most State particulate regulations use sampling temperatures of about 121°C, EPA can compare the capabilities of modified processes with the levels of control required by States. Second, unlike add-on control devices which would not control condensible matter which exists in gaseous form at stack temperatures (e.g., sulfuric acid), modified processes limit the release of this condensible matter.

The effects of sulfuric acid on sampling of particulates are included in data on modified processes. However, excess sulfuric acid which results from firing fuel oils with more than 0.5 weight percent sulfur may additionally influence the quantity of particulates measured by Method 5 when using a sampling box temperature of about 121°C. The effect occurs because excess sulfuric acid from combustion of fuels containing more than 0.5 weight percent sulfur exists as a gas as it is collected and then condenses onto the filter at a temperature of about 121°C. The effect does not occur with a filter box temperature of 177°C. Thus, to reduce the effects of excess sulfuric acid due to fuel oils, EPA is proposing, for glass melting furnaces using modified processes and burning fuel oil having a sulfur content greater than 0.5 weight percent, that compliance with the emission limits be determined using Method 5 with a sampling temperature up to 177°C.

Issue 3: Continuous Compliance. As noted above, EPA is concerned that modified processes do not necessarily provide continuous emission reduction and that once a performance test is completed, neither the operator nor the EPA would have any basis for knowing whether the facility is continuing to maintain the emission reduction observed during the performance test. To assure that owners and operators of modified processes have sufficient information to operate their modified processes in compliance, and for EPA to assure that these sources effectively operate and maintain their processes, EPA is proposing that opacity monitors be installed and operated on such sources. EPA is not aware of means other than opacity monitoring, with the exception of frequent and, therefore, costly source test, that will provide data to show the continuing emission reduction effectiveness of modified processes. Opacity monitors are estimated to cost about $13,000 annually to install and operate. This cost is very small compared to the cost of add-on control devices and is small in comparison to the emission reduction potential which derives from the ability to monitor emissions and thus to optimize process operation to reduce emissions. EPA is proposing the use of opacity monitors for furnaces using modified processes to ensure proper operation and maintenance based on the correlation between particular concentrations and opacity. This approach would require simultaneous Method 5 and opacity monitoring during the initial performance test. This approach would determine, on a case-by-case basis, a statistical relationship for each furnace between particulate emissions and its opacity. Using this statistical relationship, which would allow for variability in opacity monitoring, the glass plant would be monitored for opacity using a continuous monitor, and excess emissions would be reported to EPA. Compliance with the emission limits in § 60.293(b) would be determined as provided in § 60.293(e). The continuous monitoring required by § 60.293(c) would not be used to determine compliance with § 60.293(b). However, a repeated pattern in excess emission reports would alert EPA enforcement personnel to consider whether the facility was being properly operated and maintained consistent with good air pollution control practices.

During discussions with the petitioners, industry representatives stated that in certain circumstances it can be shown that process parameters may effectively indicate whether the emission rate observed during the performance test is continually being maintained. EPA has not received sufficient data to conclude that a reasonably accurate relationship between emission rates and key process parameters does exist. However, if such a relationship can be defined, EPA has no reason or desire to preclude the alternative of monitoring process parameters in favor of opacity monitoring. Accordingly, for those plants that demonstrate that process parameters or other factors can be used to reasonably indicate whether the emission rate observed during the performance test is continually maintained, EPA will grant approval of these alternatives to the proposed monitoring requirements. The alternative monitoring should be continuous in the sense that the measurement technique provides meaningful by frequent data that enables accurate and representative monitoring of emission rates. EPA does believe, however, that any relationship between process parameters and emission rates is likely to be variable from plant to plant, and thus such approvals may be limited to an individual plant.

Textile Fiberglass

"Issue and Response. A second issue presented in the February 4, 1981, OCF petition for reconsideration was their request that the EPA rescind the promulgated standard for textile fiberglass until there exists in the record evidence to support an achievable standard based on an adequately demonstrated control technology. This request was based on OCF's contention that the docket did not contain any evidence that any textile fiberglass plant has achieved the promulgated 0.25 g/kg standard, or any textile fiberglass plant controls its emissions with an electrostatic precipitator (ESP) or a baghouse.

The docket contains information concerning textile fiberglass manufacturing and the transfer of add-on control technology to textile manufacturing plants. In particular, the docket contains data on the application of a baghouse control system with chemical pretreatment to a textile fiberglass melting furnace. (See docket reference II–D–128 and II–D–166.) Also presented in the docket are data for a fluoride-opal glass melting furnace using an ESP control system. (See docket references II–B–63 and II–D–177.) The control of particulate emissions from fluoride-opal glass melting furnaces shares similar control problems with textile fiberglass melting furnaces because of the presence of boron and fluoride in the exhaust gases. Based on data from these two facilities, EPA concluded that the docket does contain

evidence to support the determination that textile fiberglass plants can achieve the promulgated standard of 0.25 g/kg. However, because of the uncertainty about the adequacy of the data base for the standard, EPA decided to convene a proceeding to reconsider this issue and to obtain additional information. Specifically, information and test data on the application of particulate control technology to a new textile fiberglass melting furnace and an existing textile fiberglass furnace have been obtained from the North Carolina Division of Environmental Management. (See docket references VI–D–3 and VI–D–14.) This information supports the evidence presented in the docket. EPA concludes that, based on its review of the available information, add-on control technology is adequately demonstrated for achieving the promulgated standard of 0.25 g/kg by textile fiberglass melting furnaces. Therefore, the request by OCF to rescind the promulgated standard for textile fiberglass is denied.

In addition to reconsidering the achievability of the textile fiberglass standard, PPG Industries, Inc., (PPG) requested that Method 5 test procedures for determining compliance with the standard be modified to allow the collection of particulate from a minimum exhaust gas sample volume as an alternative to the promulgated minimum collected sample weight requirement. The weight requirement was promulgated to assure an acceptable level of precision in the test method. EPA has concluded the speific gas sample volume flowrate requested by PPG does not provide an equivalent level of precision. Based on this conclusion, EPA believes that PPG's petition does not provide substantial support for their argument that the standards should be revised. Therefore, the requirement that the collected sample must weigh as least 50 milligrams (mg) remains the same as promulgated.

Discussion of Response: Achievability of Standard. In the initial development of the standards, EPA decided to divide the glass manufacturing industry into major categories rather than promulgate individudal standards for over 80 different types of glass. Four categories were selected based on similarities of the process factors including characteristics of glass melting furnaces and types of glass produced. The pressed and blown glass category was further divided into subcategories due to varying emission characteristics and control requirements among the different types of glass. Three glass subcategories were defined in the pressed and blown glass category: borosilicate glass; soda-lime and lead glass; and other than borosilicate, soda-lime, and lead glass (hereafter referred to as the "pressed and blown glass other" category).

The standard of performance promulgated for the pressed and blown glass other category was developed on the belief that add-on control technology is transferable among the different glass types included in this category. It is the conclusion of EPA that emission control levels achieved for a specific type of glass can also be achieved for other glass types having similar glass formulations and similar particulate emission chemcial compositions and physical characteristics. Glass types included in this category were judged by EPA to share similar emission control requirements.

The pressed and blown glass other category includes textile fiberglass, fluoride-opal glass, and other types of speciality glass. The promulgated standard for this category is 0.25 g/kg. The standard is supported by source test data presented in the docket for a fluoride-opal glass melting furnace controlled by a lime slurry ESP system. (See docket reference II–B–63.) Other source test data in the docket also support the standard. (For example, see docket reference II–D–184.) The technique for controlling emissions from fluoride-opal glass and textile fiberglass manufacturing involves injecting lime into the exhaust gases. This is done to control fluoride and boron compound emissions and to control acid gases in order to prevent corrosion in the equipment. The addition of lime increases the particulate grain loading at the control device inlet. This increase in the particulate grain loading represents the worst situation that a glass melting furnace in this category may experience. However, operating emission rates from the fluoride-opal furnace averaged 0.18 g/kg and were distinctly less than the level of the promulgated standard for the pressed and blown glass other category.

Emissions from textile fiberglass melting furnaces also contain fluoride as well as boron compounds. These emissions are comprised of particulates with similar, although not identical, physical and chemical characteristics as found in fluoride-opal furnace emissions. The test data on the fluoride-opal glass melting furnace demonstrate the feasibility of controlling emissions from furnaces that produce glass formulations that include boron or fluoride or both compounds in the batch materials. EPA believes that control levels ahieved for fluoride-opal glass can similarly be achieved for textile fiberglass.

the applicability of add-on control technology and the validity of the standard for textile fiberglass is further supported by additional data presented in the docket. Test results reported for a PPG textile fiberglass melting furnace controlled by a baghouse system with chemical pretreatment ranged from 0.02 to 0.07 g/kg. (See docket reference II–D–128.) These tests results were from a pilot-scale test program conducted at PPG's Lexington, North Carolina, plant. In response to questions raised about these results, additional information about the textile fiberglass melting furnace was obtained from the North Carolina Division of Environmental Management files. In addition to obtaining more detailed data on the pilot scale tests EPA learned that since completion of the pilot-scale test program, a full-scale baghouse system with chemical pretreatment has been installed on this textile fiberglass melting furnace at the Lexington plant.

Specifically, the North Carolina Division of Environmental Management file contains data for a new textile fiberglass melting furnace that PPG has recently built at their Shelby, North Carolina, plant. In their permit application to the State of North Carolina for construction and operation of a new furnace, PPG stated that based on their experience with the baghouse system at the Lexington plant "the baghouse system, with chemical pretreatment, is the only method known to PPG Industries which has been shown to control emissions from continuous strand fiberglass furnaces to the level required by the New Source Performance standards." To confirm this conclusion, EPA requested from PPG test results for the full-scale baghouse system with chemical pretreatment currently in operation at the Lexington plant. The test results show that the Lexington plant textile fiberglass furnace controlled by the baghouse system achieved a particulate emission rate of 0.25 g/kg. (See docket references VI–A–15 and VI–D–9.)

Operation of the new furnace at the Shelby plant began in October 1982. A compliance test of the baghouse system for the furnace was performed in December 1982 (see docket reference VI–D–14). The compliance testing showed the particulate emission rate from the baghouse system to be 0.1 g/kg. Therefore, EPA concluded that PPG's baghouse system demonstrates the achievability of the 0.25 g/kg standard.

In summary, the achievability of the promulgated standard for the pressed and blown glass other category is demonstrated by test results from the fluoride-opal glass melting furnace. EPA's determination that the emission control technology is applicable to textile fiberglass melting furnaces is confirmed by test results reported for an experimental baghouse system with chemical pretreatment installed at the PPG Lexington plant and for the baghouse system installed on the new full scale commercial textile fiberglass furnace at the PPG Shelby plant. EPA has concluded, therefore, that the promulgated standard of 0.25 g/kg can be achieved by textile fiberglass melting furnaces.

Discussion of Response: Alternative Test Procedure. PPG requested that an alternative test method for determining compliance with the standards (as they apply to textile fiberglass furnace) be adopted. The alternative test method would allow the collection of particulate from a minimum exhaust gas sample volume of 90 actual cubic feet (acf). The existing standards require that the collected particulate sample must weight at least 50 mg.

The total particulate sample collected using Method 5 procedures is determined by adding the weight of particulates deposited on the filter plus the weight of particulates which accumulate on the inside walls of the sampling probe. To obtain an accurate and precise sample weight it is important that the sampling probe be thoroughly cleaned to minimize any sample losses due to leaving particulates inside the probe. The significance of any errors introduced by improper cleaning of the sampling probe increases as the total weight of the particulate sample decreases. Therefore, to reduce potential sampling error to an acceptable level, EPA established the requirement of collecting a minimum of 50 mg of particulate sample.

A 50 mg particulate sample can be obtained from most glass melting furnaces in a sampling period of 1 to 2 hours. However, the PPG textile fiberglass furnaces are unique. At these furnaces emissions are controlled by using baghouse technology; and to protect internal components, furnace exhaust gases are cooled by dilution prior to entering the baghouse. Because this procedure dilutes the particulate concentration in the exhaust stream, sampling periods of 8 to 10 hours would be required to collect a 50 mg particulate sample using a conventional Method 5 train. In PPG's opinion, a 10-hour sampling period is excessive. PPG suggests that the test method be changed to allow collecting particulates in a 90 act volume sample. This would allow a test run to be completed in 1 to 2 hours, but would collect only 5 to 10 mg of particulate matter. This weight is significantly below the 50 mg minimum weight considered necessary to assure an acceptable level of precision.

Provision specified in Method 5 allow an owner or operator to use alternative test procedures in order to adapt the procedures to testing conditions. For example, to shorten sampling periods, Method 5 may be run with higher sampling flowrates. This allows a greater quantity of particulate to be collected in a shorter period of time. Equipment is available which operates at a sampling flow rate of 4 cubic feet per minute. At this flowrate, a test run for textile fiberglass furnace controlled by a baghouse could be completed in 2 to 3 hours.

Compliance of a glass melting furnace with the particulate standards is determined only by a performance test and it is therefore important that the test method be accurate and precise. It is not reasonable to compromise the precision of the test method simply to allow the test runs to be completed in a single day instead of 3 days, particularly when considering that alternative methods are available. Therefore, the requirement that the collected sample must weigh at least 50 mg remains the same as promulgated.

Research Glass Melting Furnaces

Issue and Response. PPG Industries, Inc., on December 3, 1980, petitioned the Administrator, pursuant to Section 307(d) (7) (B) of the Clean Air Act, to reconsider the final standards published in the **Federal Register** on October 7, 1980. The petition to reconsider filed by PPG stated that EPA had not sufficiently taken into account the economic impact of the standards on an experimental textile fiberglass melting furnace. The petition revealed that PPB operates an experimental textile fiberglass melting furnace whose sole purpose is to test new batch formulas and glass compositions, and provide a glass for the development of new bushings and fiber-forming concepts.

PPG stated that the information which caused their concerns had arisen after the public comment period, but within the time specified in the Act for judicial and administrative review. Upon review of the petition EPA decided to convene a proceeding to reconsider this issue and requested that PPG provide certain additional information to clarify their petition. After review of the petition and additional information, EPA is proposing to exempt experimental furnaces from compliance with the standards.

Discussion of Response. The special characteristics of the PPG experimental furnace are the use of the glass products and the useful life of the furnace. PPG states that the purpose of their experimental furnace is to test experimental batch formulas and operational modifications and to provide a source of glass for development of concepts and end product testing. PPG also indicates that the useful life of their experimental furnance is about 3 years.

The promulgated standards were developed on the premise that while internal components may be frequently replaced, the furnace superstructure would have a useful life of 50 or more years. In contrast, PPG's petition and additional information revealed that PPG's experimental furnace has an estimated useful life of only 3 years. Therefore, any control system at this experimental furnace would have a useful life of only 3 years.

Based on this new information, the costs associated with the purchase, installation, and maintenance of an add-on control device for an experimental furnace were estimated. The annualized cost was estimated to be $180,000. The emission reduction that would be required by the promulgated standards would be approximately 1.8 Mg/yr.

After considering PPG's petition and additional information, EPA has determined that an exemption from the promulgated emission limits should be granted for experimental furnaces this exemption would apply to all experimental furnaces because EPA has no reason to believe that other experimental furnaces would not be similar to PPG's experimental furnaces. This exemption would provide that furnaces with the sole purpose of being for experimental innovations of glass products and glass production technology are exempt from the numercial emission limits of the standards. If such an exempted furnace should cease at any time to meet all of the criteria set out in the regulation's definition for being an experimental furnace, that furnace will be considered an affected facility, thereby requiring it to meet the numerical emission limits of the promulgated standards.

The criteria upon which this exemption is based are: (1) The sole purpose for operating the experimental glass melting furnace is to evaluate innovative glass melting processes, technologies, or glass products; and (2) the glass products resulting from the experimental glass melting are not sold

or used as a raw material for nonexperimental furnaces. The primary criterion for determination of whether the exemption applies to a glass melting furnace is the use of the glass product produced in the furnace. A glass melting furnace is not exempt if the glass product is sold for uses other than research and development or if the glass product is used for cullet in a nonexperimental furnace. Research and development includes the development of new glass manufacturing technologies as well as the testing of new glass products.

Forming Channels

Issue and Response. In their petition, OCF requested in part that the Administrator delete the phrase "appendages for conditioning and distributing molten glass to forming apparatuses" (hereafter, flow channels) from the promulgated definition of "glass melting furnace" insofar as that definition applies to wool fiberglass and textile fiberglass furnaces.

Upon receipt of the petition, EPA analyzed the issues presented by OCF and requested that additional clarification be provided to supplement OCF's petition. A meeting on June 4, 1981, between OCF and EPA supplied some clarification.

EPA has decided to convene a proceeding to reconsider the standards with respect to this issue. Upon consideration of the information presented by OCF, EPA proposes to exclude "flow channels" from the definition of "glass melting furnace," as that definition applies to wool and textile fiberglass melting furnaces, provided the flow channels constitute a completely and permanently separate source of emissions from the rest of the furnace such that there is no mixing of emissions prior to being vented to the atmosphere.

Discussion of Response. In their petition, OCF claimed that the flow channels are not physically part of the glass melter, the emissions from the flow channels are not exhausted through the same stacks as emissions from the melter, and the background information document supporting the promulgated standards and the docket entries cited therein reveal that no stack emission test used to set the promulgated emission standards for wool fiberglass and textile fiberglass measured flow channel emissions. At the meeting with EPA on June 4, 1981, OCF indicated the presence in both wool fiberglass and textile fiberglass furnaces of an interface which effectively separates the gaseous emissions of the flow channels from the combustion emissions of the glass melter.

The principal difference between the furnaces anticipated by EPA to be regulated by the promulgated standards and OCF's wool fiberglass and textile fiberglass furnaces is with regard to the combination of gaseous emissions from the glass melter and from the flow channels prior to venting to the atmosphere. EPA intended the promulgated standards to regulate the stack where glass melting furnace gases are released to the atmosphere. The standards were developed, in part, on the premise that all emissions from the glass melting furnace (i.e., from the glass melter and the flow channels) were combined prior to venting to the atmosphere. As claimed by OCF, however, this is not necessarily the case for wool and textile fiberglass furnaces where flow channel gaseous emissions are completely and permanently separated from glass melter combustion emissions by an interface, and are vented to the atmosphere through a separate stack.

The data used to set the promulgated emission limits for wool fiberglass furnaces may not include emissions from the flow channels. Therefore EPA has concluded that flow channels whose gaseous emissions are compeletely and permanently separated from glass melter gaseous emissions should be excluded from the promulgated definition of "glass melting furnace" as that definition applies to wool fiberglass furnaces. In addition, EPA has been unable to confirm that the inclusion of textile fiberglass melting furnace flow channel emissions is consistent with the data base. Consequently, EPA is excluding flow channels from the definition of "glass-melting furnace" as it applies to wool fiberglass and textile fiberglass melting furnaces.

Flat Glass

Issue and Response. On June 30, 1981, PPG Industries, Inc., (PPG), Libbey-Owens-Ford Company (LOF), and Ford Motor Company (Ford) submitted a petition specifically requesting EPA to withdraw the standard for the flat glass manufacturing category. The petitioners presented five reasons why they believed the standard should be withdrawn: (1) A standard is not necessary because flat glass plants are not a significant source of particulate emissions; (2) costs of using add-on controls were not adequately considered in developing the standard; (3) an inadequate data base was used to select the standard; (4) the flat glass manufacturers were not given an opportunity to comment on the data base used to select the standard; and (5) the standard was based on a technology which has not been adequately demonstrated.

After review of the petition, EPA has determined that PPG, LOF, and Ford have not presented any new information relative to the need for a standard for flat glass manufacturing plants or the achievability of the promulgated standard of 0.225 g/kg. The first issue is discussed in the "Significance of Source Category" section of this preamble. As noted in that section, information presented by the petitioners does not warrant a reconsideration of the initial determination that glass manufacturing plants are significant contributors to air pollution. A detailed response to the second issue is presented in the "Use of Modified Processes and Consideration of Costs" section of this preamble. EPA agrees with the petitioners that certain modified processes are effective in reducing particulate emissions from glass melting furnaces and is proposing an emission limit of 0.5 g/kg for flat glass melting furnaces using modified processes.

The remaining issues are related to the achievability of the emission limit of 0.225 g/kg for furnaces using add-on control devices. ESP's are currently being used to control particulate emissions at two or more flat glass manufacturing plant locations in the United States. Information in the docket shows that add-on control devices can effectively control particulare emissions to the level of the promulgated standard without substantial adverse economic impact. After reviewing the petitions, EPA concluded that the petitioners do not provide substantial support for their argument. Therefore, reconsideration is denied.

Discussion of Response. PPG, LOF, and Ford presented in their petition five arguments for withdrawing the standard for flat glass manufacturing plants. Two of the arguments reiterate general issues raised by other petitioners, and already have been discussed in the substance elsewhere in this preamble. The other issues raised by PPG, LOF, and Ford are all interrelated and challenge the achievability of the promulgated flat glass manufacturing plant standard. The petitioners contend that the add-on control technology upon which EPA based the promulgated standard of 0.225 g/kg has not been adequately demonstrated. They assert that EPA used an inadequate data base to select the emission limit and that they were not given the opportunity to comment on this data.

The add-on control standard for flat glass manufacturing plants is based on the use of an ESP to control particulate emissions from the glass melting furnace. The docket contains information concerning the use of ESP's on flat glass melting furnaces. At flat glass manufacturing plants located in California, Illinois, and New Jersey, ESP's are currently used or being installed to control particulate emissions from the furnaces. Emission testing was conducted by EPA at a flat glass manufacturing plant located in California. Test results showed that particulate emissions from the furnace controlled by an ESP ranged from 0.14 to 0.225 g/kg. The test results demonstrate the achievability of the standard. (See docket reference VI–C–10.) This plant is producing high quality flat glass without substantial adverse economic impacts related to the ESP.

The petitioners argue that the glass melting furnace tested by EPA was not operated during the testing period in a manner typical of flat glass melting furnace operation because (1) the furnace tested was fired using fuel oil, (2) batch salt cake ratios were possibly adjusted for ESP operation, and (3) insufficient information was available about the furnace operating parameters to allow the petitioners to compare the furnace operation to their own furnace operations.

The glass melting furnace tested by EPA was fired using fuel oil rather than natural gas. Presently, most glass melting furnaces are fired using natural gas. These furnaces usually have the capability of burning either natural gas or fuel oil because fuel oil is burned in the event of natural gas supply curtailment, or as the primary fuel due to economic consideration. Particulate emissions from glass melting furnaces firing fuel oil are at least as great as emissions from glass melting furnaces firing natural gas. At least equivalent uncontrolled particulate loadings in the exhaust gases from a flat gas melting furnace will occur when fuel oil is fired as when natural gas is fired. Thus, test results for a fuel oil fired furnace reflect flat glass melting furnace operation during conditions that do not tend to create low uncontrolled particulate loadings. Therefore, using test results from an oil-fired furnace are an appropriate basis upon which to select an emission limit for flat glass furnaces.

The salt cake ratio of the batch at the flat glass manufacturing plant tested by EPA was not adjusted for ESP operation during the test period. All flat glass manufacturers consider their specific batch formulations to be proprietary information and, consequently, this information is not available to the public. However, EPA has reviewed the data and concluded that the salt cake ratio of the batch melted during the test period remained at the level normally used at the plant to produce architectural and decorative glass and this level is in the range of salt cake ratios typically used to produce flat glass.

The petitioners questioned the representativeness of the furnace operating parameters because they did not have access to specific information about the furnace operating conditions during the test and they could not compare the furnace operation to their own furnace operations. The specific information the petitioners requested about the furnace operating conditions were the furnace pull rate, the percentages of cullet and salt cake in the raw batch, the timing of the furnace regeneration cycle, the furnace capacity, the ESP "rapping" rate, the temperature of the inlet exhaust gas to the ESP, and the exhaust gas flow rate. Most of information requested by the petitioners is available in the public record. (See docket reference VI–C–10.) A review of this information shows that the operating conditions of the furnace during the testing were representative of flat glass melting furnaces.

Finally, the petitioners claim that because souce testing was conducted after the comment period had closed, glass manufacturers had no opportunity to comment to the test results. Before proposal of the standards, the petitioners knew that EPA planned to base the standards for flat glass manufacturing on the plant located in California (44 FR 34849). After the test was conducted, the results were placed in the public record in November 1979, about 1 year before promulgation of the standards. (See docket reference IV–B–29.) EPA did not discourage comments from the petitioners on these test results. In addition, a formal opportunity for interested parties to comment on the standard after the close of the comment period is provided by the reconsideration proceedings specified under Section 307(d)(7)(B) of the Act. By submitting a petition, PPG, LOF, and Ford have used the opportunity to present their comments on the test results.

In summary, ESP's are currently being used to control particulate emissions at two or more flat glass manufacturing plant locations. Flat glass manufacturing companies are achieving emission levels less than 0.225 g/kg while maintaining normal glass quality and production levels. EPA realizes that some flat glass manufacturers prefer to use modified processes to control particulates emissions from their furnaces. As discussed in the use of modified processes and consideration of costs section of this preamble, modified processes are effective in reducing particulate emissions from flat glass melting furnaces. Consequently, EPA is proposing an emission limit of 0.5 g/kg for furnaces using modified processes. However, for glass manufacturers who do not have the capability to use or choose not to use modified processes, add-on control devices have been demonstrated to effectively control particulates emissions to a level of 0.225 g/kg.

An existing flat glass melting furnace is subject to achieving the promulgated standard of 0.225 g/kg if the furnace is modified. A modification of an affected facility is defined in 40 CFR 60.14 as any physical or operational change to an existing facility which results in an increase in the emission rate of the pollutant(s) to which the standard applies. Paragraph (e) of 40 CFR 60.14 lists exceptions to this definition which will not be considered modifications. Major alterations that do not result in increased emissions, such as alterations where existing air pollution control equipment is upgraded to maintain emission at their previous levels, are not considered modifications.

Other Issues Presented by the Petitioners

Definitions of Glass

Issue and Response. On December 9, 1980, the Glass Packaging Institute (GPI) in a letter on behalf of several members of the Ad Hoc Air Quality Task Group requested that certain definitions in the promulgated standards be changed. GPI suggested, for several reasons, that the definitions based on the term "glass recipe(s)" (i.e., batch compositions) be replaced by definitions based on glass compositions, a means of identification more commonly used and understood in the industry.

Upon receiving this suggestion EPA reviewed the alternatives provided. As a result, it was decided to convene a proceeding to reconsider the basis upon which the three major glass types, namely soda-lime, lead, and borosilicate, are defined. Consequently, EPA is proposing to change to "glass recipe(s)" appearing in the standards to reflect glass composition as opposed to batch composition.

Discussion of Response. GPI, in their letter, suggests that the EPA base the

glass type categorizations on glass composition as opposed to batch composition. In support of this recommendation that glass types be defined in terms of compositional oxides, GPI presented several reasons. First, the possibility of raw material substitution was suggested as a cause for potential confusion. It was explained by GPI that market conditions may require that alternate batch compositions be used resulting in possible confusion on the part of the producer as well as EPA personnel responsible for the enforcement of the standards as to what glass type is being produced at a particular plant. Secondly, GPI pointed out that batch compositions are very often considered by industry to be proprietary and, therefore, closely guarded; whereas, glass composition is readily available and ascertainable. The next reason offered for the proposed definitional changes was for regulatory enforcement purposes. GPI suggests that the verification of the glass type of a particular product, by virtue of the previously mentioned GPI points, will be facilitated by the ease of identification of the various glass compositions. Finally, it was explained by GPI that besides being widely used throughout the industry for identification/categorization purposes, the use of glass composition in these standards would be consistent with EPA's having based compliance determinations on production rate criteria (the quantity of glass pulled) rather than the batch feed rate.

Based upon EPA's evaluation of these suggestions and supporting materials, EPA agrees with GPI's position. Therefore, EPA proposes to change the definitions of these glass types as suggested by GPI. EPA believes these changes would not represent substantial changes to the final standards. The only situation where these changes may cause confusion is the application of the new glass recipe definitions to the pressed and blown glass category. The weight proportion ranges of ingredients in each glass recipe are not absolute limits, but instead are reasonably close approximations. For example, lead oxide is generally not used in soda-lime recipes. However, in contrast to container glass where no lead oxide is added to the soda lime recipe (less than 5 percent), some pressed and blown soda-lime glass products may include minor amounts of lead oxide in the glass recipe. For purposes of these standards, these press and blown glass products would still be assigned to the "soda-lime recipe" subcategory and not to the "other than borosilicate, soda-lime, and lead recipe" subcategory.

Withdrawal of the Applicability Date

Issue and Response. On June 30, 1981, the petitioners requested EPA to "withdraw the applicability date" of the current standards of performance. They refer to the fact that under Section 111(a)(2) of the Clean Air Act, a "new source" subject to applicable standards is defined to be any source constructed after the date on which the standards were proposed. The standards for glass manufacturing plants were proposed on June 15, 1979. Plants constructed after that date are therefore new sources under the Act and subject to the standards, and June 15, 1979, is referred to as the applicability date. Petitioners suggest that EPA change the applicability date to the date on which EPA convenes a proceeding to reconsider the standards and proposes appropriate revisions to the standards (i.e., today's date). That is, petitioners ask that EPA vacate the standards insofar as they apply to sources built between June 15, 1979, and today's date.

In EPA's view, vacating the standards as they apply to such sources would be inconsistent with the language and purposes of the Clean Air Act and, therefore, reconsideration is denied. Section 111(a)(2) establishes the applicability date of standards of performance as the date of their proposal. Congress clearly intended that EPA's decision to convene a proceeding to reconsider standards should not have the effect of vacating the standards. Section 307(d)(7)(B) specifically provides:

> Such reconsideration shall not postpone the effectiveness of the rule.[2]

Discussion of Response. The fact that reconsideration creates some uncertainty as to the ultimate form of the standards does not justify deviating from the plain terms of the statute. Indeed, a certain degree of uncertainty is inherent in the NSPS rulemaking process. The effect of such uncertainty was addressed in *United States* v. *City of Painesville*, 644 F.2d 1186 (6th Cir. 1981). In that case, the City argued that the applicability date of the standards should be changed because the standards had been remanded on judicial review. The standards [40 CFR 60.43(a)(2)] has been promulgated in 1971. The record was remanded to EPA for reconsideration in 1973. EPA published an initial response to the remand in 1975 and a final response in 1977. 644 F.2d at 1188–1190. Proceedings to review the final response were initiated, *Appalachian Power Co.* v. *Costle*, No. 78–1092 (D.C. Cir.), and dismissed in 1978. Uncertainty as to the final form of the standard therefore existed for a period of 7 years, from 1971 to 1978. As the Court noted, however, that fact did not affect the applicability date:

> The statute unambiguously establishes the benchmark for determining which sources of a particular pollutant are new sources. "[T]he publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance . . . which will be applicable to such source" determines what sources are new; a source whose construction commended after such publication is subject to the new source standards, whatever they might be or become . . . . A proposed regulation is, or course, subject to both administrative and judicial review and, consequently, modification. By identifying new sources with reference to the publication date of a proposed standard, Congress eschewed the City's position that new sources of SO_2 remain unknown until the substantive standard becomes unreviewable. [644 F.2d at 1189.]

See: Denial of Petitions for Reconsideration of NSPS for Electric Utility Steam Generating Units, 45 FR 8210, 8232 (delay between proposal and promulgation of standards of performance does not affect applicability date); *Pennsylvania* v. *EPA*, 618 F.2d 991 (3rd Cir. 1980) (same result under Clean Water Act).

This result is not unfair or unreasonable. The principal amendment to the current standards being proposed in response to the petitions for reconsideration would relieve furnaces using modified processes from having to install add-on control devices. While some uncertainty exists until EPA takes final action on the proposed amendment, no reason appears why that uncertainty justifies vacating the standards insofar as they apply to sources constructed before today's date. Vacating the standards would in fact have broader effects than today's proposed amendment, which would modify, but not vacate, the standards. It should be noted that any action to vacate standards would be subject to the notice and comment and other procedural requirements of Section 307(d) of the Clean Air Act, pursuant to Section 307(d)(1)(C) and 307(d)(7)(B).

Exemption During Periods of Maintenance

Issue and Response. After the standards were promulgated, GPI commented that an exemption from the

[2] It appears that Congress intended that any relief due to the fact that reconsideration had been granted should be limited to, at most, a 3 month *stay* of the effectiveness of the rule. *Id.*

numerical emission limits is needed during periods of add-on control device maintenance. This suggestion in based on their concern that the numerical emission limits must be achieved on a continuous basis. GPI stated that, if enforced to the letter, the standards would require glass manufacturers to either shut down their furnaces, or be found in violation of the standards, during times when furnace exhaust gases are bypassed around add-on control devices during routine maintenance.

EPA has reviewed this matter and agrees that the extended operating periods which are typical of glass melting furnaces may in some cases exceed the normal maintenance interval of a fabric filter or electorstatic precipitator (ESP). While certain steps (e.g., use of multiple compartment control equipment) can be taken by the owner to minimize emission increases during routine maintenance, duplicate control capacity may be required to prevent totally emissions in excess of the numerical emission limits during routine maintenance. EPA does not intend that duplication be build into these control systems. Accordingly, EPA decided to convene a proceeding to reconsider this issue and is proposing to amend the standards to exempt glass melting furnaces from the numerical emission limits during periods of routine maintenance of add-on control devices. The proposed amendment requires glass manufacturers to minimize air pollution during these periods and limits this exemption to 6 calendar days each year. In addition, the proposed amendment requires glass manufacturers to notify the Administrator prior to these periods of routine maintenance.

Discussion of Response. Commercial glass production requires glass melting furnaces to operate 24 hours per day continuously for several years between furnace shutdowns. Often these periods are 3 years or more. Furnace shutdowns during these periods of continuous operation adversely impact commercial glass production because furnace shutdowns can lead to faster wear on the furnace refractory and prevent the furnace from producing glass of satisfactory quality for several days.

GPI is concerned that, under the current standards, shutdown of glass melting furnaces would be required during the maintenance of add-on control devices. They contend that, if the standards were enforced to the letter, glass manufacturers would have to interrupt production in order to be in compliance with the standards or else be in violation of the standards during maintenance of add-on control devices. GPI is therefore requesting that glass melting furances be exempt from the numerical emission limits during periods of routine maintenance of add-on control devices.

Good air pollution control practice requires that add-on control devices be maintained in proper working order to ensure high collection efficiency and to minimize the potential for equipment breakdown and malfunction. Over the life of an add-on control device, inspection and routine maintenance is needed at periodic intervals (on semi-annual or annual basis depending on the type of control equipment) to maintain it in proper working order. During these periods of routine maintenance, it may be necessary to bypass the exhaust stream around one or more sections of an add-on control device. For most industries, these periods can occur during process shutdowns which occur at least once per year. However, because glass melting furnaces typically operate continuously for several years, periods of routine maintenance occur when the glass melting furnace is operating. Therefore, EPA believes that some glass manufacturers may be faced with the situation that concerns GPI. To evaluate the need for an exemption during periods of maintenance, EPA obtained additional information about control equipment maintenance practices from equipment manufacturers and glass companies operating control Systems.

Even though emissions resulting from the maintenance of a glass melting furnace add-on control device may be in excess of the numerical emission limits, the emissions can be minimized through certain design or operational practices. First, common ESP and fabric filter designs allow most routine maintenance without bypassing all compartments of the add-on control device. Common ESP designs available for glass plants are constructed with multiple compartments. However, these designs are commercially used at glass melting furnaces with large gas flows (e.g. flat glass melting furnaces). Multiple compartment design allows one compartment to be bypassed for maintenance while the furnace exhaust gases are sent through the remaining compartments. Another ESP design installed on glass plants involved internal elements which require infrequent maintenance. Fabric filter designs are available which allow replacement of filters without bypassing the add-on control device. Second, glass melting furnaces are periodically placed in an idle operating mode. Routine maintenance of the add-on control devices could be performed at these times. Thus, while procedures are available to prevent or at least minimize emissions during routine maintenance, it is nevertheless concluded that there may be some cases where emission increase cannot be avoided.

EPA is proposing to exempt, under certain circumstances, glass melting furnaces from the emission limitations for add-on control devices during periods of routine maintenance. This exemption applies to glass melting furnaces which require maintenance to ensure continued compliance with the emission limitations of the standards. The exemption allows a glass melting furnace to exceed the numerical emission limit up to 6 days per year if this occurs during routing maintenance and if the owner or operator performs the maintenance in a manner consistent with good air pollution control practice for minimizing emissions. As a consequence, the exemption would allow complete bypassing of the add-on control device only if it is not practicable to partially bypass the control device, and would require that maintenance be performed during idle or low production periods as often as practicable. The 6-day period was selected on the basis of a semi-annual inspection and routine maintenance program for an ESP having compartments which cannot be isolated and requiring maintenance personnel to enter the compartments. Other control sytem designs expected to be installed by glass companies require less frequent inspection and maintenance intervals, have individual compartments which can be isolated to perform maintenance and repairs without bypass of the system, or allow maintenance to be performed external to the control system compartments. (See docket reference VI-D-11.)

This exemption would not apply to periods when bypassing of the control system was required due to a malfunction (e.g., repair of a mechanical component). These situations are covered by 40 CFR 60.11(d) which requires the glass melting furnace to be operated, to the extent practicable, in a manner consistent with good air pollution control practice for minimizing emissions. The exemption also would not apply to situations where add-on control devices have not been properly operated and maintained. EPA is proposing that owners and operators notify EPA of the use of this exemption and the circumstances of the use; owners and operators would report the

schedule for the maintenance at least 10 days before the maintenance is to occur.

Production Rate Exemptions

Issue and Response. Glass industry representatives submitted to EPA on August 12, 1981, a letter summarizing their position on all of the issues concerning the standards of performance for glass manufacturing plants. (See docket reference VI–A–17.) In their letter they requested EPA to make two additional revisions to the standards. Glass industry representatives requested that the current production rate exemption of less than 4,550 kg/day be extended to furnaces with a design capacity up to 22,700 kg/day. Glass industry representatives also requested the current zero production rate allowance for periods when furnaces are idling or at zero production rate be replaced for most of the glass manufacturing plant categories by hourly emission allowances of 1,135 g/hr for furnaces having a design capacity less than 363 Mg/day and 2,270 g/hr for furnaces having a design capacity of 363 Mg/day or greater.

Comments concerning both provisions were originally received by EPA from glass industry representatives when the standards were proposed. When the standards were promulgated, changes were made to the proposed standards in response to these comments. In EPA's opinion, the glass industry representatives have not presented any new information to give substantial support for their arguments for additional changes to these provisions and therefore their petitions are denied.

Discussion. For the largest segments of the glass industry, container glass, flat glass, wool fiberglass, and textile fiberglass, new glass melting furnaces are expected to have design capacities significantly greater than 22,700 kg/day. However, at some pressed and blown glass plants new furnaces may be built which are rated at design capacities less than 22,700 kg/day. Although EPA used a 45,400 kg/day furnace as the smallest furnace size for its model plant analysis of the pressed and blown glass manufacturing plant category as presented in the background information document for the proposed standards (See docket reference III–B), EPA did reexamine the issue in response to comments and data submitted by glass industry representatives following proposal of the standards. Design of a control system for reducing particulate emissions from a glass melting furnace is influenced by a variety of factors, including glass type and production rate, furnace size, exhaust gas flow rate and temperature, quantity and size of the particulates, resistivity of the particulates, and presence of other pollutants. However, for a specific type of glass production, the costs of controlling particulate emissions are generally proportional to the exhaust gas flow rate. The exhaust gas flow rate from a glass melting furnace depends on the amount of fuel burned in the furnace. Fuel consumption depends on the amount of heat required to melt the batch ingredients in order to produce the desired quantity of glass product. Therefore, it is reasonable to proportion the control costs for the 45,400 kg/day model plant furnace to smaller size furnaces producing the same type of glass. Based on this analysis, EPA concluded the standards are reasonable for the smaller size furnaces likely to be built at pressed and blown plants. No new technical or cost information has been presented in the glass industry's current request which would change this conclusion. Therefore, the exemption will continue to apply only to furnaces having a design capacity less than 4,550 kg/day.

In response to comments on the proposed standards made by glass manufacturers, EPA changed the method for calculation of furnace emission rate by providing zero production rate adjustment factors of 227 g/hr or 454 g/hr depending on the glass manufacturing plant category. The commenters were concerned that emissions from glass melting furnaces during idle or low production rates would be in violation of the standards because of the inability of glass furnaces to achieve a zero emission rate at times when the production rate approaches zero. Commenters noted when the production rate of a glass melting furnace is zero there are still particulate emissions due to the requirement to maintain the molten glass at the proper temperature. To resolve this concern, EPA selected zero production rate adjustment factors based on information provided by the commenters.

Glass industry representatives in their August 12, 1981, letter requested that for most of the glass manufacturing plant categories, the zero production rate adjustment factor and formula be replaced by minimum hourly emission rates of 1,135 g/hr and 2,270 g/hr depending on furnace size. However, no new technical information was presented by the glass industry representatives to give substantial support for adopting these higher emission rates, nor was information provided which would indicate that the zero production rate adjustment which is now contained in the standard is faulty. Therefore, the zero production rate adjustment factors for idling and low production furnaces remains the same as promulgated.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because it would reduce the cost of compliance with the current standards.

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 are available for public inspection at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601, et seq., is not required for this rulemaking, because the rulemaking would not have significant impact on a substantial number of small entities. This regulation would reduce the cost of compliance with the current standards.

The information collection requirements in this proposed rule have been (or will be) submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners,

Dated: October 21, 1983.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

It is proposed to amend 40 CFR Part 60, Subpart CC, as follows:

1. In § 60.291, the following definitions are revised: "Borosilicate recipe," "Glass melting furnace," "Lead recipe," and "Soda-lime recipe;" and the following definitions are added in alphabetical order: "Experimental furnace," "Flow channels," "Textile fiberglass," and "With modified-processes;" as follows:

§ 60.291 Definitions.

"Borosilicate recipe" means glass product composition of the following approximate ranges of weight proportions: 60 to 80 percent silicon dioxide, 4 to 10 percent total R_2O (e.g., Na_2O and K_2O), 5 to 35 percent boric oxides, and 0 to 13 percent other oxides.

* * * * *

"Experimental furnace" means a glass melting furnace with the sole purpose of operating to evaluate glass melting processes, technologies, or glass products. An experimental furnace does not produce glass that is sold (except for further research and development purposes) or that is used as a raw material for nonexperimental furnaces.

* * * * *

"Flow channels" means appendages used for conditioning and distributing molten glass to forming apparatuses and are a permanently separate source of emissions such that no mixing of emissions occurs with emissions from the melter cooling system prior to their being vented to the atmosphere.

"Glass melting furnace" means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

* * * * *

"Lead recipe" means glass product composition of the following approximate ranges of weight proportions: 50 to 60 percent silicon dioxide, 18 to 35 percent lead oxides, 5 to 20 percent total R_2O (e.g., Na_2O and K_2O), 0 to 8 percent total R_2O_3 (e.g., Al_2O_3), 0 to 15 percent total RO (e.g., CaO, MgO), other than lead oxide, and 5 to 10 percent other oxides.

* * * * *

"Soda-lime recipe" means glass product composition of the following ranges of weight proportions: 60 to 75 percent silicon dioxide, 10 to 17 percent total R_2O (e.g., Na_2O and K_2O), 8 to 20 percent total RO but not to include any PbO (e.g., CaO, and MgO), 0 to 8 percent total R_2O_3 (e.g., Al_2O_3), and 1 to 5 percent other oxides.

"Textile fiberglass" means fibrous glass in the form of continuous strands having uniform thickness.

"With modified-processes" means using any technique designed to minimize emissions without the use of add-on pollution controls.

(Sec. 111, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7601(a)))

2. In § 60.292, paragraphs (d) and (e) are added as follows:

§ 60.292 Standards for particulate matter.

* * * * * * *

(d) An owner or operator of an experimental furnace is not subject to the requirements of this section.

(e) During routine maintenance of add-on pollution controls, an owner or operator of a glass melting furnace subject to the provisions of § 60.292(a) is exempt from the provisions of § 60.292(a) if:

(1) Routine maintenance in each calendar year does not exceed 6 days;

(2) Routine maintenance is conducted in a manner consistent with good air pollution control practices for minimizing emissions; and6

(3) A report is submitted to the Administrator 10 days before the start of the routine maintenance (if 10 days cannot be provided, the report must be submitted as soon as practicable) and the report contains an explanation of the schedule of the maintenance.

(Sec. 111, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7601(a)))

3. Section 60.293 is added as follows:

§ 60.293 Standards for particulate matter from glass melting furnaces with modified-processes.

(a) An owner or operator of a glass melting furnace with modified-processes is not subject to the provisions of § 60.292 if the affected facility complies with the provisions of this section.

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator of a glass melting furnace with modified-processes subject to the provisions of this subpart shall cause to be discharged into the atmosphere from the affected facility:

(1) Particulate matter at emission rates exceeding 0.5 gram of particulate per kilogram of glass produced (gkg) as measured according to paragraph (e) of this section for container glass, flat glass, and pressed and blown glass with a soda-lime recipe melting furnaces.

(2) Particulate matter at emission rates exceeding 1.0 gkg as measured according to paragraph (e) of this section for pressed and blown glass with a borosilicate recipe melting furnace.

(3) Particulate matter at emission rates exceeding 0.5 gkg as measured according to paragraph (e) of this section for textile fiberglass and wool fiberglass melting furnaces.

(c) The owner or operator of an affected facility that is subject to emission limits specified under paragraph (b) of this section shall:

(1) Install, calibrate, maintain, and operate a continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the affected facility.

(2) During the performance test required to be conducted by § 60.8, conduct continuous opacity monitoring during each test run.

(3) Calculate 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period during the test runs.

(4) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 97.5 percent upper confidence level of a normal distribution of average opacity values.

(5) For the purposes of § 60.7, report to the Administrator as excess emissions all of the 6-minute periods during which the average opacity, as measured by the continuous monitoring system installed under paragraph (c)(1), exceeds the opacity value corresponding to the 97.5 percent upper confidence level determined under paragraph (c)(4).

(d)(1) After receipt and consideration of written application, the Administrator may approve alternative continuous monitoring systems for the measurement of one or more process or operating parameters that is or are demonstrated to enable accurate and representative monitoring of an emission limit specified in paragraph (b)(1) of this section.

(2) After the Administrator approves an alternative continuous monitoring system for an affected facility, the requirements of paragraphs (c) (1)

through (5) of this section will not apply for that affected facility.

(3) An owner or operator may redetermine the opacity value corresponding to the 97.5 percent upper confidence level as described in paragraph (c)(4) of this section if the owner or operator:

(i) Conducts continuous opacity monitoring during each test run of a performance test that demonstrates compliance with an emission limit of paragraph (b) of this section,

(ii) recalculates the 6-minute opacity averages as described in paragraph (c)(3) of this section, and

(iii) uses the redetermined opacity value corresponding to the 97.5 percent upper confidence level for the purposes of paragraph (c)(5) of this section.

(e) Test methods and procedures as specified in §60.296 shall be used to determine compliance with this section except that to determine compliance for any glass melting furnace using modified processes and fired with either a gaseous fuel or a liquid fuel containing less than 0.50 weight percent sulfur, Method 5 shall be used with the probe and filter holder heating system in the sampling train set to provide a gas temperature of 120±14°C.

(Sec. 111, 114, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7414, 7601(a)))

4. In § 60.296, the introductory text of paragraph (a) is revised, and paragraph (g) is added to read as follows:

§ 60.296 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under §60.8(b), shall be used to determine compliance with §60.292 and §60.293 as follows:

* * * * *

(g) If an owner or operator changes an affected facility from a glass melting furnace with modified processes to a glass melting furnace without modified processes or from a glass melting furnace without modified processes to a glass melting furnace with modified processes, the owner or operator shall notify the Administrator 60 days before the change is scheduled to occur.

(Sec. 111, 114, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7414, 7601(a)))

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federal register

Wednesday
November 2, 1983

Part V

Environmental Protection Agency

Compliance With the Statutory Provisions of Part D of the Clean Air Act, Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL 2432-3, Docket A-83-01]

Compliance With the Statutory Provisions of Part D of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Final action on rulemaking proposals and announcement of policy.

SUMMARY: On February 3, 1983 (48 FR 4972 and 48 FR 5022) the Environmental Protection Agency (EPA) published two rulemaking proposals relating to implementation of the primary national ambient air quality standards under the Clean Air Act. The first package proposed to disapprove State implementation plans and impose construction bans in nonattainment areas that were required to attain the standards by December 31, 1982, but were still experiencing violations. This package also proposed to disapprove plans and impose bans in nonattainment areas that had not received full EPA approval for plan revisions due in 1979.

The second package proposed action on implementation plans submitted in 1982 by nonattainment areas that had obtained extensions of the 1982 deadline for the carbon monoxide or ozone standards. EPA proposed to impose bans in all areas where it was proposing to disapprove 1982 plans.

After evaluating the comments submitted in response to its proposal, EPA has revised its views as to the legal consequences of a failure to meet the 1982 deadline. Today's notice contains two final actions reflecting these changed views. In addition, in Section IV of this notice EPA sets out a general policy for correcting all of the problems identified in both of the proposals published on February 3.

EFFECTIVE DATE: November 2, 1983.

ADDRESSES: Background material for this action is located in Docket No. A-83-01, West Tower Lobby, Gallery 1, U.S. Environmental Protection Agency, Central Docket Section, 401 M Street, S.W., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying. A duplicate copy of the docket is available in each EPA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stonefield, Chief, Policy Development Section, Office of Air Quality Planning and Standards (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5540.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 3, 1983, EPA published two large rulemaking proposals relating to implementation of primary national ambient air quality standards (NAAQS) under the Clean Air Act. *See* 48 FR 4972-5021 and 5022-5149. One package spelled out how EPA planned to treat "nonattainment" areas that were to have been free of violations of the relevant primary NAAQS by the end of 1982, but are still experiencing them. The heart of this package was a proposal to impose a ban on new construction in such areas, even if EPA previously had approved the State implementation plan (SIP) that the State had devised for attainment by the end of 1982. The other package consisted of proposals to approve or disapprove numerous implementation plans for another class of nonattainment areas, those that have an extension of the 1982 attainment deadline for the carbon monoxide or ozone standards.

EPA here is taking final action on portions of the first package only. In the main, it is revising its view as to the legal consequences of a failure to meet the 1982 deadline. EPA is not taking any action here on the proposals in the other package, but it sets out the significance of this new view for nonattainment areas that have extensions. Action on those proposals will appear in individual **Federal Register** notices over the next several months.

The balance of this notice gives the background to the first February 3 package, outlines the proposals in that package and the bases for them, summarizes the voluminous comments EPA received in response to the proposals, describes EPA's new interpretation of the Act, elaborates on that view in the form of a policy for all SIP deficiencies in nonattainment areas, and, finally, specifies the final actions EPA is taking today. This notice, it should be emphasized, focuses only on implementation of primary NAAQS.

II. Background

A. 1977 Amendments to the Clean Air Act

In many areas of the country, the first SIPs failed to bring about attainment within the original deadlines established under the 1970 Clean Air Act amendments. In 1976, EPA found these plans to be inadequate under Section 110(a)(2)(H) and called for SIP revisions. *See, e.g.*, 41 FR 28842 (July 13, 1976). EPA later announced that the Act contained a ban on new source construction that would apply in any area that failed to meet the deadlines EPA established for submittal of its SIP revision. *See* 41 FR 55521 (December 21, 1976).

1. *Designations*

When Congress amended the Act in 1977, it addressed the same problem in a similar way. First, Congress set in motion a comprehensive, formal inventory of the attainment status of all areas of the country. A new Section 107(d) required each State to identify immediately areas that were experiencing violations of the standards, areas that were not, and areas that were unclassifiable for lack of adequate data. The section further required EPA to review each identification, make necessary modifications, and promulgate attainment status designations for all areas by February 1978.

2. *Construction Bans and Revised Plans*

Next, Congress conditioned further growth in each nonattainment area on the timely revision of the SIP for the area in accordance with strict new requirements. Section 110(a)(2)(I) required each State to revise its SIP to prohibit the construction or modification of major stationary sources of pollution after July 1, 1979 in any nonattainment area whose SIP did not meet the requirements of a new Part D to Title I of the Act, Sections 171-177. Section 172(a)(1) specified that each SIP for a nonattainment area had to "provide for" attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982. Section 172(b) detailed other requirements Part D plans had to meet.

Section 172(a)(2) allowed areas that demonstrated that it would be impossible to attain either the ozone or carbon monoxide standards by the end of 1982 to obtain attainment date extensions and defer compliance with some of the requirements of Section 172(b). Section 172(c), and Section 129(c) of the 1977 Amendments, however, required areas that received extensions to submit, no later than July 1, 1982, supplemental SIP revisions containing enforceable measures needed to assure attainment no later than December 31, 1987.

3. *Funding Restrictions as Incentives for Plan Revisions*

As a further incentive to the revision of plans for nonattainment areas, Congress provided funding restrictions in Section 176(a) and 316(b). Under

Section 176(a), EPA and the Department of Transportation must restrict funding in any area where transportation controls are needed to provide for attainment by the applicable deadline and a State fails to submit or make reasonable efforts to submit a plan that "considers" each of the Part D requirements. Under Section 316(b), EPA has discretion to limit funds for construction of sewage treatment facilities in any area where a State does not have in effect a plan that accommodates emissions associated with sewage treatment facilities.

4. *Restrictions as Incentives for Implementation*

Congress also sought to ensure that SIPs for nonattainment areas, once revised, would be implemented. It added two construction bans and two funding restrictions that apply in areas where State or local agencies have failed to carry out the SIP. Section 173(4) requires each SIP for a nonattainment area to contain regulations that prohibit new source construction and modification in any area where a State or local agency has failed to carry out its SIP. In addition, Section 113(a)(95) authorizes EPA to prohibit the construction of any major stationary source in any such area. Section 176(b) prohibits EPA from awarding any grants under the Clean Air Act to any such area. EPA may also apply Section 316(b) in such areas.

5. *Calls for Plan Revisions*

Finally, Congress retained Section 110(a)(2)(H), the remedial mechanism EPA used in 1976. Section 110(a)(2)(H)(ii) requires each SIP to require its own revision if EPA finds that a plan is "substantially inadequate" to achieve timely attainment of the national ambient air quality standard that it implements. In 1977 Congress added new language allowing EPA to call for a revision when a plan fails to comply with any requirement of the 1977 amendments.

B. Implementation of the 1977 Amendements

1. *Designations*

In March 1978, EPA designated over 400 areas as nonattainment for one or more primary or secondary NAAQS. 43 FR 8902. EPA adjusted many of these designations in the fall of 1978. *See, e.g.*, 43 FR 40502 (September 12, 1978).

2. *Construction Bans*

By July 1, 1979 almost none of the nonattainment areas had in effect an SIP provision that met the requirements of Sections 110(a)(2)(I) and 173(4). As a result, on July 2, 1979 (44 FR 39471), EPA published a regulation that inserted the Section 110(a)(2)(I) and Section 173(4) construction bans into SIPs that lacked them and clarified the scope of bans in SIPs that had them. EPA described the regulation as an "interpretive rule" that merely implemented the requirements of Section 110(a)(2)(I) and 173(4).

In the same notice EPA announced that the Section 110(a)(2)(I) ban had gone into effect on July 1, 1979 in each nonattainment area that lacked an approved or promulgated Part D plan. EPA explained that the Act imposed this ban automatically in any area that did not have a Part D SIP in effect on that date. EPA announced that it would lift the ban when it approved or promulgated the necessary Part D provisions.

EPA later explained that once it had approved a Part D plan and removed the initial Section 110(a)(2)(I) ban, new bans would not come into effect automatically. EPA concluded that it would have to evaluate an approved plan and find that it no longer satisfied Part D before the Section 110(a)(2)(I) ban could take effect. *See* 46 FR 62651 (December 28, 1981). EPA implied that it would have to publish notice of its finding before the ban would be effective.

In yet another notice EPA took the position that the Section 173(4) ban was not automatic. That ban applies only where EPA finds that a State or local government is not carrying out an approved or promulgated Part D plan. EPA concluded that it should propose a finding of inadequacy and provide an opportunity to comment on its factual basis before imposing this ban. *See* 47 FR 9477 (March 2, 1982).

3. *Action on Revised Plans*

Also on July 2, 1979 (44 FR 38583), EPA announced that it would approve "Conditionally" any Part D revision that contained only minor deficiencies if the State committed to submit corrections promptly on a definite schedule. EPA said that it would lift the Section 110(a)(2)(I) ban upon a conditional approval and that it would disapprove the plan and reimpose the ban upon a failure to meet the schedule for submitting corrections.[1]

The Section 110(a)(2)(I) construction ban still remains in effect in a few nonattainment areas that do not have an attainment date extension. Some of these areas submitted Part D revisions that EPA disapproved for failure to meet one or more of the Part D requirements. In other cases, areas submitted revisions, but EPA has not yet finally determined whether they meet the Part D requirements. And in a few cases, areas have simply not submitted all or part of their Part D revisions.

For the majority of nonattainment, nonextension area, however, EPA has approved fully or conditionally all portions of a Part D plan. All areas that received conditional approvals committed to fulfill their conditions by specific deadlines. Some of these deadlines have not been met, either because the States have not submitted the necessary corrections, or because EPA has not yet determined whether the submitted material meets the relevant Part D requirements.

The approval status of the nonattainment areas that received attainment date extensions parallels roughly the approval status of the nonextension areas. As noted above, these areas had to submit Part D revisions in 1979 and supplemental revisions in 1982. In a very few areas the section 110(a)(2)(I) moratorium remains in effect because EPA disapproved a portion of a 1979 submission. In most cases, EPA approved fully or conditionally the 1979 submissions.[2]

Each of the States with extension areas has submitted at least a draft of its supplemental revision, and EPA has proposed action on each submittal. On February 3, EPA proposed to disapprove plans for 17 States. *See* 48 5022–5148. EPA has proposed to approve the remaining 14 submissions.

4. *Funding Restrictions*

(a) *Section 176(a).* On April 10, 1980 (45 FR 24692), EPA and the Department of Transportation published a joint policy for the implementation of the Section 176(a) funding restrictions. In this policy, the two agencies took the position that the restrictions would apply only in regions that had not submitted (or made reasonable efforts to submit) Part D SIPs for transportation-related pollutants. The policy stated that EPA would judge each region's efforts on a case-by-case basis.

The policy gives EPA discretion to determine whether funding restrictions should apply throughout an entire air

[1] EPA's authority to grant conditional approvals has been upheld, although the U.S. Court of Appeals for the Second Circuit has ruled that EPA may not lift the Section 110(a)(2)(I) Construction ban upon a conditional approval. *Connecticut Fund for the Environment* v. *EPA*, 672 F.2d 998 (2d Cir. 1982).

[2] Some extension areas apparently have not implemented their 1979 plans. On August 3, 1983 (48 FR 35312) EPA proposed to find that 11 States with extension areas were not implementing vehicle inspection/maintenance programs. EPA proposed to impose contruction moratoriums under Section 173(4) and funding restrictions under Section 176(b).

quality control region, or only in those portions of the region designated nonattainment for a transportation-related pollutant. If restrictions are imposed, EPA has discretion to continue to award air pollution control funds to agencies not directly responsible for the failure to submit a plan. The Department of Transportation has discretion to fund projects meeting the exemptions listed in Section 176(a). The policy provides additional criteria for determining which projects should be exempt.

The policy also sets out procedures for imposing the restrictions, including notice and opportunity to comment. The policy suggests, but does not require, that removal of the restrictions should wait until EPA approves a revised SIP as meeting the Part D requirements. The policy notes that, since Section 176(a) requires action by the State, Federal promulgation of a Part D SIP would not justify removal of the restrictions.

(b) *Section 176(b).* EPA has not issued a formal policy for Section 176(b), which applies when State or local agencies fail to carry out a SIP. However, EPA has taken positions on some issues in its proposals to use Section 176(b). For example, where different levels of government share SIP responsibilities, EPA has stated that it may continue to fund agencies in the level of government that is not responsible for the implementation problem. *See* 47 FR 9477 (March 5, 1982) and 48 FR 35312 (August 3, 1983). EPA has requested comment on alternative formulas for computing the amount of funding that is intended for use in the area where the SIP is not being carried out. Under one of these formulas, EPA would withhold the amount of funds EPA needs to implement the program that the State has not implemented. *See* 48 FR 35312.

Procedurally, EPA has determined that it should provide notice and an opportunity to comment on both the factual basis of its finding and the amount of funding to be withheld. *See* 47 FR 9477 and 48 FR 35312. EPA will also provide an opportunity for a hearing as required under Section 105(e).

(c) *Section 316(b).* EPA published a policy for Section 316(b) on August 11, 1980 (45 FR 53382). The Policy adopts a "reasonable efforts" approach to judging State efforts to submit and implement Part D plans. It also exempts from any restrictions projects needed to meet existing health needs that will not expand capacity by more than 1 million gallons per day, and projects that would improve treatment, but not expand capacity. The policy adopts the procedures developed for imposing and removing Section 176(a) restrictions.

C. EPA's February 3 Proposals for Nonattainment, Nonextension Areas

1. *Proposals to Disapprove and Impose the Section 110(a)(2)(I) Construction Ban*

On February 3, 1983, EPA proposed two sets of findings for SIPs for nonattainment, nonextension areas. First, EPA proposed to find as a factual matter that many of these SIPs had failed to meet one or more Part D requirements. Second, EPA proposed that the legal consequences of such failures should be disapproval and the imposition of a construction ban under Section 110(a)(2)(I). EPA also solicited comment on applying funding restrictions.

EPA's factual proposals addressed three Part D planning problems.

(a) *Failure To Attain by December 31, 1982.* First, EPA proposed to find that SIPs for 111 areas, many of which had received approval or conditional approval of their Part D SIP revisions, had failed to bring about attainment by the end of 1982.[3] For a list of these areas, *see* the first column in "Appendix D" to the proposal, 48 FR 5005–5021. EPA took the position that any area that failed to attain by 1982 could not be said to satisfy Section 172(a)(1), which requires the plan for any nonextension area to "provide for" attainment by the end of 1982. Consequently, EPA proposed to disapprove these SIPs and impose the ban under Section 110(a)(2)(I).

Following this logic, EPA also proposed to disapprove plans for nonattainment areas that it had designated nonattainment after the first round of designations in 1978 and that it thought would continue to experience violations after 1982. EPA announced that the 1982 attainment deadline would apply even to areas it designated as nonattainment after 1982. EPA also stated that the Section 110(a)(2)(I) ban would apply immediately in areas designated nonattainment after 1982, since the designation itself would show that the plan had failed to assure timely attainment and, therefore, was not meeting the requirements of Part D.

EPA earlier had interpreted the Act to allow areas designated nonattainment after July 1, 1979 one year to develop a Part D plan and six months to obtain EPA approval before a construction ban would apply. In 1980, EPA promulgated a regulation postponing the application of any moratorium in such an area for eighteen months. *See* 40 CFR 52.24(k) (1982). On February 3, EPA proposed to revoke this regulation.

In contrast to the above proposals, EPA proposed to exempt from disapproval two groups of nonattainment, nonextension areas for which it projected violations after 1982. One was ozone nonattainment areas that could demonstrate that they (1) would have attained the primary NAAQS for ozone "but for" the impact of ozone transported from other areas and (2) had met all other Part D requirements. *See* 48 FR 4975–4976. To implement this exemption, EPA omitted rural ozone nonattainment areas from its list of areas considered not likely to attain. EPA had previously recognized that violations in such areas typically are caused by ozone transported from urban areas. *See* 44 FR 20372 (April 4, 1979).

The second group of areas were those that could demonstrate that they would have achieved the primary NAAQS in question "but for" emissions of a source that had obtained a compliance date extension beyond 1982 under Section 113 or Section 119 of the Act. These areas also had to show that all other sources in the area were complying with applicable SIP requirements. EPA did not identify any nonattainment area in this second group.

(b) *Failure to Fulfill Conditions.* Next, EPA proposed to find that 41 areas had not met conditions EPA imposed while approving their 1979 plans. For a list of these areas, see the second column of the chart in "Appendix D", 48 FR 5005–5021. EPA also proposed to disapprove plans and impose Section 110(a)(2)(I) bans in these areas.

(c) *Failure To Have in Effect Approved or Conditionally Approved Part D Plans.* Finally, EPA proposed to find that 53 areas did not have in effect fully or conditionally approved Part D SIPs. A few of these areas had never submitted a Part D plan to EPA for review; others had made only partial submittals. A few areas had submitted plan revisions that EPA had not yet approved or disapproved. The remaining areas had submitted plans, but received disapprovals.

The Section 110(a)(2)(I) ban EPA imposed in 1979 is still in effect in almost all of these areas. Consequently, EPA was proposing to maintain the status quo in these areas.

[3] EPA based its preliminary conclusion that these areas had failed to attain by the end of 1982 on estimates of the likelihood that they would experience violations after 1982. EPA, in turn, based these estimates on (1) the most recent available monitoring data for each nonattainment area, generally only data from 1981 and the first two quarters of 1982, and (2) projections of the effectiveness of control measures scheduled for implementation in late 1982.

2. *Funding Restrictions and Other Construction Bans*

In the February 3 notice, EPA solicited comment on whether the funding restrictions of Sections 176(a), 176(b) and 316 of the Act should apply in any area where EPA disapproved a plan for failure to attain or failure to meet the Part D planning requirements. EPA also requested comment on whether there might be circumstances justifying the application of these restrictions without prior notice and opportunity to comment. EPA did not, however, propose to restrict funds in any area. Similarily, EPA did not propose to impose either the Section 173(4) ban or the Section 113(a)(5) ban.

3. *Other Issues*

(a) *Requests for Attainment Date Extensions.* EPA also announced that it would disapprove any new request for an extension of the attainment date for the ozone or carbon monoxide standards for either an "original" or a newly-designated nonattainment area. EPA explained that Section 172(a)(2) requires all extension requests to have been submitted on or before January 1, 1979. EPA acknowledged that it had approved extension requests submitted after that date when they accompanied an areas's original Part D submittal, but asserted that Section 172(a)(2) could not be read to permit extensions any later in the planning process.

(b) *Pending Revisions to NAAQS.* EPA also announced that it could provide no exemptions from construction or funding restrictions for any nonattainment area based on possible changes to any of the NAAQS.

(c) *Areas Expected to Attain by December 31, 1982.* EPA's February 3 proposal also listed all nonattainment, nonextension areas that EPA expected to meet the December 31, 1982 attainment deadline. To confirm that these areas had in fact attained, EPA proposed to require each area to submit by July 1, 1984, a request for redesignation to attainment. EPA implied that it would disapprove the plan for any area that could not demonstrate that it had attained the standards by that time. For a list of areas that EPA expected to meet the 1982 attainment deadline, see "Appendix C" of the February 3 notice, 48 FR 4979–5003.

D. Comments on February 3 Proposals for Nonattainment, Nonextension Areas

1. *Proposed Disapprovals and Construction Moratoriums*

(a) *Failure to Attain by December 31, 1982.*

• *General Legal Issues.* Nearly all of the commenters that addressed these proposals protested EPA's proposal to disapprove already approved plans and reimpose the construction ban for failure to attain by the end of 1982. The commenters asserted that the purpose of Section 110(a)(2)(I) and Part D was not to ensure attainment by the end of 1982, but to induce States that had missed the attainment dates set by the 1970 amendments to the Clean Air Act to revise their plans.

Some commenters, focusing on the language and history of Section 110(a)(2)(I) and Part D, pointed out that Part D merely requires plans to "provide for" attainment by the end of 1982. *See* Section 172(a)(1). They argued that Congress easily could have chosen a stronger word, such as "achieve" or "assure," if it had meant Part D to require actual attainment.

One commenter used legislative history to show that Congress chose to use "provide for" precisely because it is less demanding. As originally drafted, the provision that became Section 172(a)(1) required Part D plans to "assure" attainment. The sponsor of the amendment that replaced "assure" with "provided for" stated that he wanted to ensure that States would not have to guarantee that their revised plans would actually bring about attainment. (Transcript of Senate Clean Air Act Mark-up, May 4, 1977, pages 13–14.)

Other commenters noted that Section 110(a)(2)(I) only requires areas to "plan" for attainment to escape the construction ban. They asserted that the legislative history describes the ban as an inducement to timely planning, rather than a penalty for unsuccessful planning.

Still other commenters, focusing on prior EPA action, reminded EPA that, when SIPs submitted under the 1970 amendments failed to bring about attainment, EPA called for SIP revisions under Section 110(a)(2)(H) instead of disapproving plans for failure to "provide for" attainment under Section 110(a)(1). Moreover, at that time, EPA interpreted the Act as prohibiting new source construction only in areas that failed to submit revised SIPs within the deadlines established by EPA. These commenters argued that EPA should follow the same process for plans that failed to "provide for" attainment under Section 172(a)(1). They felt that the existence of this alternative remedy made it unnecessary to adopt what they regarded as strained interpretations of Sections 110(a)(2)(I) and 172(a)(1).

Most commenters that urged EPA to use Section 110(a)(2)(H) conceded that a construction ban should apply if an area failed to revise its plan in response to a notice of inadequacy. A few, however, argued that EPA should promulgate plan revisions under Section 110(c)(1)(C) instead of imposing a ban.

• *General factual issues.* Many commenters protested EPA's use of projections based on monitoring data from 1981 and 1982. They urged EPA to wait until 1983 data becomes available. One commenter supported the proposed procedure, but argued that EPA had not made sufficient allowance for unusual meteorological conditions that might have caused violations. A few commenters argued that EPA had not given enough information on its selection of data to provide a meaningful opportunity to comment.

• *Ozone transport issues.* Many commenters supported the proposal to exempt ozone areas that can demonstrate that their continued violations are caused by transported pollution. Four commenters, however, felt that it was impossible to make such demonstrations using current data and modeling techniques. Others wanted to expand the exemption to other pollutants.

• *Compliance date extension issues.* All of the comments on this issue supported the idea of exempting areas that could demonstrate that they would have attained but for a source that received a compliance date extension beyond 1982. Many commenters urged EPA to expand the exemptions to other situations. One commenter felt EPA's two-pronged test was too burdensome. This commenter favored relaxing the requirement that all other sources in the area must be in compliance and eliminating the requirement for a demonstration that the area would have attained but for the compliance date extension.

• *Removal of construction ban.* Commenters responded variously to EPA's request for comment on when to remove construction bans. The most common suggestion was that EPA should remove the ban as soon as it approved a revised SIP curing the deficiency that caused EPA to disapprove the plan. Other suggestions included removal upon mere submittal or a revised plan, removal upon commencement of good faith efforts toward submitting a revised plan, and removal upon submittal of a request for redesignation to attainment. One commenter also suggested that the ban could be lifted when a source obtained sufficient offsets to show a net reduction in emissions.

These comments addressed not only disapprovals for failure to attain, but

also disapprovals for failure to fulfill conditions and disapprovals for failure to have in effect by now a fully or conditionally approved plan.

b. *Failure to Fulfill Conditions.* No comment addressed this issue directly. Several commenters, however, argued that EPA should not disapprove a plan in an area that probably attained in 1982, even if the plan failed to meet some of the other Part D Requirements. Since the construction ban and the Part D requirements do not apply in areas designated attainment under Section 107(d), the commenters argued that EPA should not apply them in areas where attainment is considered likely.

c. *Failure to Have in Effect an Approved or Conditionally Approved SIP.* Commenters generally agreed that the construction ban should apply in areas that apparently failed to attain and that lack fully or conditionally approved Part D plans. Some commenters argued however, that the ban should not apply in areas which probably attained the standards in 1982.

d. *Proposals for Newly-Designated Nonattainment Areas.* All of the commenters that addressed this issue objected to EPA's proposals to revoke 40 C.F.R. 52.24(k) and require areas designated nonattainment after the first round of designations to meet the 1982 deadline for attainment. They felt that the proposals would produce absurd results, especially in areas designated nonattainment after December 31, 1982.

Many of the commenters argued that Section 107(d) and Part D do not apply to these areas. They suggested that EPA should issue a notice of deficiency under Section 110(a)(2)(H) if it discovers violations in an area designated attainment or unclassified. A few commenters suggested that EPA should continue to use the time intervals between the specific dates in Section 107(d) and Part D.

2. *Funding Restrictions*

(a) *General legal issues.* All commenters on this issue opposed the use of funding restrictions in areas with approved Part D plans that apparently failed to attain by December 31, 1982, unless EPA could show that a State had failed to carry out its plan. These commenters argued that there was no support in the language of Sections 176(a), 176(b), or 316 for applying the restrictions in an area that had implemented an approved plan but had failed to attain. The commenters also asserted that the legislative history showed that Congress intended EPA to impose Section 176(a) only where a State failed to submit a plan, not where a State failed to bring about attainment.

(b) *Procedural issues.* Many commenters argued that EPA had no authority to impose funding restrictions without providing prior notice and opportunity to comment. Some commenters added that Section 105(e) requires EPA to provide an opportunity for a hearing before it withholds any grants for air pollution control programs. Others urged EPA to follow the special policy and procedures developed by EPA and the Department of Transportation for Section 176(a).

3. *Other issues*

(a) *Attainment date extensions for carbon monoxide and ozone.* All but one of the commenters addressing this provision opposed EPA's proposal to interpret Section 172(a)(2) as prohibiting extensions unless requests were submitted with 1979 plan revisions. Most of these commenters cited a 1979 policy memorandum which stated that EPA would grant extensions later in the planning process. They also argued that it would be unfair to penalize areas that had carried out approved plans in good faith.

The commenter that did not favor extensions suggested that areas that failed to attain should be given an opportunity to revise their plans before any restrictions were imposed.

(b) *Effect of pending revisions to standards.* All comments on this issue urged EPA to refrain from disapproving plans and imposing restrictions in particulate matter nonattainment areas. One commenter suggested that EPA disapprove plans only in those areas that would be nonattainment under a revised particulate matter standard.

(c) *Areas expected to attain by December 31, 1982.* Several commenters supported EPA's proposal to presume nonattainment for any area listed in Appendix C of the February 3 notice that failed to submit a request for redesignation by July 1, 1984. One commenter asked EPA to relax the deadline to October 1984.

A fairly large number of commenters asked EPA to clarify its policy on the data needed to support a redesignation request.

E. Congressional Action

In June 1983 Congress added to the HUD-Independent Agencies Appropriations Bill for fiscal year 1984 a provision which provides:

> None of the funds provided in this Act may be obligated or expended to impose sanctions under the Clean Air Act with respect to any area for failure to attain any national ambient air quality standard established under Section 109 of such Act (42 U.S.C. 7409) by the applicable dates set forth in Section 172(a) of such Act (42 U.S.C. 7502(a)).

Pub. L. 98-45, 97 Stat. 226 (July 12, 1983). The bill, including this measure, was passed by both houses and signed on July 12, 1983. It will limit EPA's ability to impose construction and funding restrictions during fiscal year 1984.

The legislative history shows that Congress enacted this measure largely as a response to EPA's February 3 proposal to disapprove approved and implemented plans that failed to bring about attainment by the end of 1982. *See, e.g.*, 129 Cong. Rec. S8818 (daily ed., June 21, 1983 (remarks of Senator Randolph); 129 Cong. Rec. H3506 (daily) ed. June 2, 1983) (remarks of Representative Dingell). It also shows that Congress intended to prohibit only those "sanctions" imposed for failures to attain. Construction bans and funding restrictions for failures to submit plans or carry out plans are still authorized. *See* 129 Cong. Rec. S8816 (remarks of Senator Randolph); 129 Cong. Rec. H3503-3504, (daily ed. June 2, 1983) (remarks of Representative Waxman); 129 Cong. Rec. H3513 (remarks of Representative Broyhill). In fact, one of the chief spokesmen for the Senate amendment made it clear that EPA could still limit construction and funding in an area with an approved and implemented Part D plan that failed to bring about attainment if the State failed to revise the plan within a reasonable time. *See* 129 Cong. Rec. S8817 (daily ed. June 21, 1983) (remarks of Senator Stafford).

III. Response to Comments

This section provides EPA's response to the major comments on legal and policy issues. EPA will respond to comments on factual issues in the final notices of inadequacy and final disapprovals that it will publish in the near future.

A. Proposed Disapprovals and Construction Bans

1. *Failure to Attain by December 31, 1982*

EPA has been persuaded to change its view on the legal consequences of finding that a nonattainment, nonextension area with a fully approved and implemented Part D plan failed to attain by December 31, 1982. EPA now agrees that the better interpretation of the Act is that Section 110(a)(2)(I) and Part D were intended to produce revised plans that appeared to "provide for" attainment by the 1982 or 1987 deadlines. EPA agrees that the language

and legislative history of Section 172(a)(1) suggest that SIPs were only expected to "provide for" attainment in a prospective or planning sense. Furthermore, EPA agrees that its decision not to apply bans immediately in areas that missed the original attainment deadlines is a significant precedent. In fact, EPA has determined that Congress quite probably endorsed this approach in enacting the 1977 amendments.

Moreover, EPA believes that the legislative history of the construction ban, while not conclusive, suggests that the primary purpose of the ban was to provide an incentive for submitting revised plans that met the Part D requirements. Imposing bans in areas with approved plans that missed the 1982 attainment deadline would do little to further this goal, because these areas have already met the requirements of Part D. This reasoning is set out at greater length in an opinion of the General Counsel dated July 12, 1983, which has been included in the docket for this rulemaking.

EPA is withdrawing its proposals to disapprove plans and impose Section 110(a)(2)(I) bans in areas with approved and implemented Part D plans. Moreover, EPA is promulgating an addition to 40 CFR 52.24(a) that will prevent the Section 110(a)(2)(I) ban from applying in such areas.

EPA, however, will find that approved Part D plans that failed to bring about attainment by 1982 are inadequate under Section 110(a)(2)(H). EPA will call for plan revisions, and impose bans under Section 173(4) and funding restrictions under Section 176(b) in any area that fails to submit a revision in a timely manner.

EPA is retaining the exemptions for ozone transport and compliance date extensions that commenters favored. EPA will not issue findings of inadequacy for areas that can demonstrate that they would have attained but for ozone transport or extended compliance schedule. EPA, however, is eliminating from both exemptions the requirements relating to compliance by other sources. These other requirements are not relevant to the purpose of the exemptions. Where other sources are not in compliance because plans are not being carried out, EPA may impose restrictions for failure to implement under the policy outlined in Section IV of this notice.

2. *Failure to Fulfill Conditions*

EPA is not changing its views on the legal consequences of a failure to fulfill a condition of approval, even for areas that may have attained by 1982. So long as an area is designated nonattainment under Section 107(d), the Act requires compliance with all of the Part D requirements. EPA believes the States should bear the burden of demonstrating attainment. Furthermore, so long as any doubt exists, it better serves the Act's health protection purposes to continue to require compliance with Part D.

3. *Failure to Have in Effect an Approved or Conditionally Approved Part D SIP*

Commenters generally supported EPA's proposal to retain existing disapprovals and bans in these areas. As explained in Section IV of this notice, EPA has decided to retain this proposal.

4. *Newly-Designated Nonattainment Areas*

EPA has been persuaded to retain 40 CFR 52.24(k) and allow newly-designated nonattainment areas a reasonable time to submit Part D plans and provide for attainment. EPA is convinced that Congress could not have intended the 1979 and 1982 dates to apply to areas designated attainment long after the original designations in 1978. Moreover, EPA has concluded that the best way to provide sufficient time is to retain the approach long established by Section 52.24(k) and use the time intervals suggested by Section 110(a)(2)(i) and Part D to establish dates for plan submittal and attainment.

B. Funding Restrictions

After reviewing the comments, EPA agrees that none of the funding restrictions in the Act apply to areas with approved and implemented Part D plans that only missed the 1982 attainment date. Furthermore, if EPA imposes restrictions for other reasons, it will first provide notice and opportunity to comment. EPA will not restrict any Clean Air Act funds under Sections 176(a) or 176(b) without also providing an opportunity for a hearing as required by Section 105(e).

C. Other Issues

1. *Attainment Date Extensions*

EPA is modifying the interpretation of Section 172(a)(2) that it proposed on February 3 to allow newly-designated nonattainment areas for carbon monoxide and ozone to obtain extensions if they submit their requests with their first Part D submissions. Allowing them to request extensions at this time will be more consistent with the practice EPA established for the "original" nonattainment areas. Furthermore, it is consistent with the general approach to dates in Part D that EPA is adopting for newly-designated areas.

EPA did not find that any commenters presented a sound rationale for expanding Section 172(a)(2) to permit areas to request extensions later in the process. Although the legislative history does not explain why Congress imposed a January 1, 1979 deadline on extension requests, it seems likely that Congress wanted to force States to make decisions on extensions early in the planning process, to ensure that there would be sufficient time to implement the stringent controls needed for an area where "reasonable measures" would not provide for attainment. This purpose would not be served by allowing areas to obtain extensions after they submit their initial Part D plans.

2. *Pending Revisions to Standards*

No commenter offered a convincing legal rationale that would allow EPA to stay implementation of the existing particulate matter standard. EPA is considering the possibility of focusing the particulate matter standard on small particles. In an attempt to accommodate the commenters' equitable concerns, EPA intends to allow States to structure their particulate matter revisions so they will concentrate on smaller particulates first.

3. *Areas Expected to Attain by December 31, 1982*

Although the comments generally supported the proposal to require redesignation requests from all areas considered likely to attain, EPA has decided to withdraw the proposal. Some States might wish to retain the stricter Part D regime even in areas that come into attainment. Section 116 of the Act makes it clear that States are always entitled to regulate more strictly than the Act requires. Consequently, EPA has no clear authority to require a State to redesignate and give up its Part D program.

IV. Policy for Correction of Part D SIPs for Nonattainment Areas

A. Introductory Comments

This section describes the approach EPA wants States to take to remedy SIP deficiencies in nonattainment areas. It addresses both the specific deficiencies indentified in the February 3 proposals and deficiencies that may be identified in the future. Also, it describes EPA's revised view of the legal consequences of a failure to correct a deficiency.

In most cases, EPA wants to give States an opportunity either to show that their SIPs are not deficient or to remedy their deficiencies before

construction and funding restrictions apply. States may show that SIPs are not deficient by requesting redesignation to attainment under Section 107(d). States may remedy deficiencies by either implementing or revising their existing SIPs. EPA is preparing comprehensive guidance for areas that need to implement or revise their plans. EPA expects this guidance to be available later this fall.

If a State neither submits a redesignation request nor cures its SIP deficiencies, EPA will propose construction and funding restrictions. If a State commits to remedy its deficiency by a specific date and, at the same time, shows that it cannot possibly move any more quickly, EPA may defer final action until that date, unless it learns later that the State will not meet its commitment. EPA does not anticipate that any State will need more than one year to correct any of the SIP deficiencies identified in the February 3 proposal.

If a State fails to redesignate or solve its problems within the time limits described below, EPA will publish a notice in the **Federal Register** announcing that appropriate construction and funding restrictions apply.

If EPA imposes construction and funding restrictions, it will remove them when it approves a redesignation request or finds that the State has cured its deficiency. If the State must submit a plan revision, EPA will remove restrictions only when it approves the State's revision or promulgates a Federal revision. If the State must implement an approved plan, EPA will remove restrictions only when it finds that the State has completed all actions needed to carry out the plan.

Where a SIP is deficient because it lacks needed control measures, EPA will consider promulgating the measures. Resource constraints will almost certainly make it impossible for EPA to promulgate Federal plan revisions immediately in all areas where they might be needed. Consequently, EPA will promulgate first in those areas where air grant funds have been restricted and where it believes that Federal action will be most effective. EPA will remove construction bans if it promulgates a plan revision that brings the area into full compliance with Part D. Promulgation, however, will not remove funding restrictions. To remove these restrictions, States will have to submit or implement their own plans or formally adopt the EPA plans as their own. *See e.g.*, 46 FR 24692 (April 10, 1980) (Section 176(a) policy).

EPA will administer this policy in accordance with the objectives that the Administrator announced in his June 23, 1983 speech to the Air Pollution Control Association. These objectives are:

(1) Carry out the Clean Air Act.

(2) Move the nation closer to the health goals of the Act.

(3) Strengthen Federal, State, and local air pollution control programs.

(4) Treat all parties fairly.

(5) Provide incentives for States to fulfill their planning and implementation obligations rather than punishments for failures.

(6) Avoid unnecessary economic disruption.

B. Policy

EPA has classified SIP deficiencies for nonattainment areas into the following categories:

1. Nonattainment areas without attainment date extensions.

(a) Areas with fully approved 1979 plans or portions of plans.

(i) Areas that failed to implement.

(ii) Areas that failed to attain by the end of 1982.

(b) Areas that failed to fullfill conditions of approval on 1979 plans.

(c) Areas lacking approved or conditionally approved 1979 plans.

(i) Areas that failed to submit plans.

(ii) Areas that received disapprovals.

(iii) Areas that submitted plans that EPA has not acted upon.

(d) Areas with approved and implemented plans that are expected to attain.

2. Nonattainment areas with attainment date extensions.

(a) 1979 plans.

(b) 1982 plans.

(i) Plans proposed for approval.

(ii) Plans proposed for disapproval.

(iii) Plans not submitted.

(iv) Areas that do not implement plans.

3. Newly-designated nonattainment areas with and without extensions.

Each nonattainment area must correct each deficiency that applies to it. Some areas will need to correct more than one deficiency for the same plan. Also, since some areas are nonattainment for more than one pollutant, they may need to revise more than one plan.

1. *Nonattainment Areas Without Attainment Date Extensions*

(a) *Areas With Approved 1979 Part D Plans or Portions of Plans.*

(i) *Areas that did not implement approved plan provisions.* EPA did not propose on February 3, 1983 to find that any nonattainment, nonextension area had failed to carry out an approved Part D plan provision. EPA, however, may discover that some areas failed to carry out their plans. If EPA discovers such problems, it will propose to find that the area is not implementing its plan and propose to limit construction and funding under Sections 173(4) and 176(b). The timing of restrictions and the remedy will vary with the type of provision that is not being implemented.

• *Schedules for adoption of additional control measures.* EPA approved some Part D plans containing schedules that required areas to adopt additional control measures needed to assure attainment. For example, some particulate matter nonattainment plans require areas to study nontraditional sources of particulate matter and adopt additional controls.

If IPA learns that an area has not carried out such a schedule, EPA promptly will propose to find that the area is not implementing its approved Part D SIP. Simultaneously, EPA will propose to limit construction under Section 173(4) and air pollution control funding under Section 176(b). EPA will provide an opportunity to comment and an opportunity to request a hearing.

If, during the comment period, an area commits to a new deadline for adopting the necessary control measures as quickly as possible, EPA will defer its final action until that deadline. To ensure that areas implement their plans expeditiously, EPA will not accept deadlines more than one year from the date of the proposed nonimplementation finding.

If an area misses its deadline for submitting new control measures, EPA will take final action to find that the area has failed to implement and impose the construction and funding restrictions. If, however, an area submits new control measures within its deadlines, EPA may continue to defer action while it evaluates the new measures. If EPA approves the new measures as revisions to the Part D plan, EPA will withdraw the proposed non-implementation finding, construction limitations, and funding restrictions. If EPA disapproves the measures, EPA will impose the restrictions immediately.

• *Implementation or enforcement of existing measures.* All approved Part D plans require areas to implement or enforce adopted control measures. For example, a plan for an ozone area may require a State or local government to construct high-occupancy vehicle lanes. Other plan provisions may require the State or local government to enforce emission limitations for stationary sources. EPA will propose nonimplementation findings and construction and funding restrictions for

any area that has failed to carry out either type of requirement. EPA will proceed generally as described above in the discussion of plans requiring the adoption of control measures. EPA expects, however, that areas would need much less than one year to adopt new policies or procedures or commit new resources to implement existing measures; consequently, it does not anticipate that it will defer final action as long as it would for an area that needs to adopt new control measures. EPA will withdraw proposed or final restrictions when an area shows that it has completed all steps needed to implement the measure that it has neglected.

• *Approvals with understanding.* In some cases EPA approved a Part D plan with the understanding that an area would take additional actions needed to meet a Part D requirement. Where areas submitted commitments to take the additional actions by specific dates, and EPA noted these commitments in its rulemaking actions, EPA will treat a failure to meet a commitment as a failure to implement an approved plan provision. If EPA discovers that areas have failed to meet these commitments, it will propose nonimplementation findings, construction limitations, and funding restrictions as described above.

(ii) *Areas with approved plans that did not attain by December 31, 1982.* On February 3 EPA proposed to disapprove plans for nonattainment, nonextension areas that appeared to have failed to attain by December 31, 1982. As explained earlier in this notice, EPA has decided that the Clean Air Act does not require disapprovals in such cases. Consequently, EPA will proceed as described below.

• *Call for SIP revisions.* Where a fully approved Part D plan failed to bring about attainment by the end of 1982, EPA will treat the plan as "substantially inadequate" to assure attainment under Section 110(a)(2)(H) and call for a SIP revision. EPA will provide one year for the submittal of the new revision under Section 110(c)(1)(C). The revisions will have to provide for attainment as expeditiously as practicable and may need to meet new requirements beyond the scope of Part D. EPA will discuss these requirements in the detailed guidance document that it is preparing.

EPA will treat the disapprovals it proposed on February 3 as proposed findings of inadequacy under Section 110(a)(2)(H). The factual findings concerning pollution levels that supported the proposed disapprovals will also serve as bases for finding of inadequacy. After reviewing all comments that addressed individual areas, EPA will, as appropriate, withdraw its proposed findings of inadequacy or publish final findings and call for SIP revisions. EPA intends to complete its review of comments and act on these proposals in the near future. EPA will provide up to one year from the date of any final finding for the submittal of a plan.

• *Consequences of failing to submit a SIP revision.* If an area fails to meet the deadline for submittal of its plan revisions, EPA will propose immediately to find that the State has failed to implement the provision to its SIP that, in accordance with Section 110(a)(2)(H), requires the State to revise the SIP upon a finding of inadequacy. At the same time, EPA will propose construction and funding restrictions under Sections 173(4) and 176(b). In some cases, EPA may also propose to impose funding restrictions under Section 316(b). Because it is essential to induce States to produce plans providing for attainment as quickly as possible, EPA will take final action as quickly as possible while providing an adequate, but minimal opportunity for comment, including an opportunity to request a hearing.

If an area submits a revision before EPA takes final action on these nonimplementation sanctions, EPA may defer action until it evaluates and acts on the submittal. EPA may, if appropriate, propose approval of a plan containing draft regulations and defer final action until the regulations are formally adopted. If EPA approves a revision, it will withdraw the proposals. If EPA disapproves the plan, it will take final action immediately to impose the restrictions it proposed. The disapproval notice will explain why the Agency rejected the new submittal.

Once restrictions are imposed, they will be lifted only upon approval of a revised SIP or promulgation of a Federal SIP revision.

• *Exceptions.* On February 3, EPA proposed to exempt from disapproval areas that could show that they would have attained "but for" ozone transport or compliance date extensions. For the reasons explained in the February 3 notice, EPA will not call for SIP revisions in areas that can demonstrate that they would have attained but for these reasons.

(b) *Areas with Conditionally Approved 1979 Plans that Did Not Meet Conditions.* On February 3 EPA proposed to disapprove plans and impose Section 110(a)(2)(I) bans in nonattainment, nonextension areas that had failed to fulfill conditions EPA imposed on its approval of 1979 plans. EPA plans to retain these proposals, but modify its final actions as described below.

Many areas with conditionally approved plans also failed to attain by the end of 1982. Fulfilling the condition may not be enough to bring about attainment as expeditiously as practicable. These areas will need to submit further plan revisions following the guidelines above for areas that failed to attain.

• *Review of conditions.* EPA plans to review all outstanding conditions to determine whether they are still germane to attainment or maintenance of the NAAQS or to meeting Part D requirements. EPA will revoke any unnecessary conditions and withdraw its proposals to disapprove and impose the construction ban. Where EPA finds that a condition is necessary,[4] it will

[4] EPA is not at this time planning to call for rule revisions to comply with certain conditions requiring States to meet new source review rules EPA promulgated on August 7, 1980 (45 FR 52676). In February 1982 EPA signed a settlement agreement in which it agreed to propose to revise several of these rules. *Chemical Manufacturer's Association* v *EPA*, D.C. Cir. No. 79-1112. Because of this agreement, EPA conditionally approved several State programs which generally met EPA's 1980 regulations, but which did not meet some of the rules covered by the settlement agreement. The conditions require the States to revise their nonconforming rules within one year unless EPA changes its own rules so that the State rules would be acceptable. *See, e.g.*, 48 FR 9859 (March 9, 1983) (Alabama new source review regulations). EPA has further conditioned approval of these regulations by requiring interim implementation in conformance to the Agency's current rules.

The uncertainty created by the settlement agreement still exists. EPA did promulgate a change to its definition of "source" for nonattainment areas, but this revision was successfully challenged in the U.S. Court of Appeals for the District of Columbia Circuit, *NRDC* v. *Gorsuch*, 685 F. 2d 718 (D.C. Cir 1982). The Supreme Court has accepted EPA's petition for certiorari to review this decision. In addition, on August 25, 1983 (48 FR 38745), EPA proposed to make several other revisions contemplated by the agreement. Accordingly, EPA finds it appropriate to postpone calling for regulatory changes to comply with these conditions. However, States must continue to meet all conditions concerning requirements for interim implementation.

EPA does not intend to postpone calling for compliance with earlier conditions imposed on areas that had not yet begun to adopt regulations meeting EPA's 1980 new source review rules. Areas subject to these earlier conditions must meet existing deadlines for adopting regulations that conform to EPA's 1980 rules. If these areas adopt rules that conform to all portions of EPA's 1980 rules except those covered by the settlement agreement, EPA will issue new conditional approvals like the ones described above.

In addition, there are a few areas that have not met EPA's 1980 regulations that obtained full approval for their new source review programs. EPA intends to impose conditions on these areas that will require compliance with all portions of the 1980 rules except those affected by the settlement agreement. EPA will issue new conditional approvals which deal with the CMA portions of the 1980 regulations.

notify the area and proceed as described below.

EPA intends to complete its review of conditions by the end of 1983. As part of the review, EPA will consider all comments on particular conditions submitted in response to the February 3 proposal.

• *Consequences of not meeting germane conditions.*

—Disapprovals and Section 110(a)(2)(I) bans. EPA expects that it will find that many areas proposed for disapproval on February 3 will still need to meet their conditions.

Where the condition involves a serious plan deficiency and is long overdue, EPA may issue a final disapproval and impose a Section 110(a)(2)(I) construction ban immediately after it completes its review of conditions. If the deficiency is less serious, and if the area commits to meet the condition by a new date, EPA may defer final action until that date. Areas that want to commit to new dates may submit their commitments while EPA is reviewing the conditions. In no case does EPA expect to defer action for more than one year after the completion of its review of conditions.

If a State makes a submittal intended to satisfy the condition before EPA disapproves the plan, EPA will continue to defer action while it reviews the submittal. If EPA approves the submittal, it will withdraw the proposed restrictions. If EPA disapproves the submittal, it will disapprove the plan and proceed with the appropriate funding restriction.

Where a ban is imposed, EPA will remove it only when it takes final action finding that the condition has been met or redesignates the area to attainment.

—Funding restrictions for ozone, carbon monoxide and nitrogen dioxide plans. Where an area has failed to meet a condition for a Part D plan for ozone, carbon monoxide, or nitrogen dioxide, EPA will consider restricting highway and air pollution control funds under Section 176(a). EPA will propose to impose Section 176(a) restrictions where areas have not made reasonable efforts to fulfill their conditions. EPA will provide opportunity to comment and an opportunity for a hearing before it takes final action. As described above for the construction ban, EPA may defer final action for up to one year if an area commits to a new date for meeting its condition. EPA will remove restrictions in accordance with its April 1980 policy.

—Funding restrictions for other pollutants. Section 176(a) does not apply to plans for non-transportation related pollutants. Because EPA believes it is essential to have all areas to meet necessary conditions, it intends to propose funding restrictions under Section 176(b) and a construction ban under Section 173(4) where areas have not met conditions for other pollutants. More specifically, EPA will consider its conditional approval as the equivalent of a finding of inadequacy and a call for a SIP revision under Section 110(a)(2)(H). Any area which has failed to meet the condition has failed to carry out the provision in its SIP that requires a revision when EPA makes a finding of inadequacy. Accordingly, EPA will be able to use Section 176(b) and 173(4), which apply in areas that have not carried out approved plans. EPA will propose to impose these nonimplementation restrictions at the same time it disapproves or proposes to disapprove a plan. As described above for the Section 110(a)(2)(I) construction ban, EPA may defer action if an area commits to a new date for meeting its condition. EPA will review new submittals, impose restrictions and remove restrictions as described above for the construction ban.

(c) *Areas Lacking Approved or Conditionally Approved 1979 Plans.*

(i) *Plan not submitted.*

• *Requirements for plan approval.* All areas designated as nonattainment in 1978 were required to have in effect by July 1, 1979 plans that met the Part D requirements. EPA wants areas that have not obtained approval or conditional approval fo their Part D plans to do whatever is necessary to obtain approval. In most cases, this will require new plan revisions.

Although it will no longer be possible for these areas to submit plans that "provide for" attainment by the end of 1982, EPA has concluded that it may approve plans that "provide for" attainment as expeditiously as practicable while meeting all other Part D requirements. Upon approving such a plan, EPA will remove the existing Section 110(a)(2)(I) ban and withdraw any proposed or final funding restrictions.

• *Consequences of failing to submit plans*

—Section 110(a)(2)(I) construction ban. In each nonattainment, nonextension area that has failed to submit all or part of a 1979 Part D plan, the Section 110(a)(2)(I) ban went into effect on July 2, 1979 and remains in effect today. As EPA proposed on February 3, it will leave this ban in effect until it approves or promulgates a plan for the area as meeting the requirements of Part D.

—Funding restrictions for ozone, carbon monoxide and nitrogen dioxide plans. Where an area has not made reasonable efforts to submit a Part D plan for an ozone, carbon monoxide, or nitrogen dioxide nonattainment area, EPA will propose in the near future to restrict highway and air pollution control funding under Section 176(a). If an area commits to submit a Part D plan at the earliest possible date, EPA will defer action on the proposal until that date so long as the area makes measureable progress. In no case will EPA defer final action for more than one year from the date it proposes to impose funding restrictions. If, however, a State submits a plan to EPA within one year, EPA will continue to postpone final action on the restrictions until it takes final action on the plan. If EPA approves the plan, it will withdraw the proposed funding restrictions. EPA will impose the restrictions if it disapproves the plan.

—Funding restrictions for plans for other pollutants. EPA intends to use the Section 176(b) funding restrictions for areas that are nonattainment for other pollutants. For these areas, EPA will treat the February 3 notice as a proposed finding of inadequacy under Section 110(a)(2)(H). As soon as possible after issuing this policy, EPA will publish final findings of inadequacy and call for plan revisions. EPA intends to set a deadline for submittal of these revisions within 60 days from the date of the final finding. These plans were originally due over four years ago; consequently, EPA is providing the shortest deadline suggested by Section 110(c)(1)(C).

If an area does not submit a Part D plan within this 60 days, EPA will promptly publish a propose finding of nonimplementation, propose to restrict funds under Section 176(b), and propose a limit construction under Section 173(4). If an area commits to a schedule for submitting a revised plan, EPA will postpone final action on the funding restrictions for up to one year after the date of its final finding of inadequacy. If an area submits a plan revision on time, EPA will defer action on the funding restrictions as described above in the discussion of 176(a).

(ii) *Plan disapproved.* In virtually all areas that received disapprovals on their 1979 plans, the Section 110(a)(2)(I) ban remains in effect.[5] As proposed on February 3, these bans will remain in effect until EPA approves a plan as meeting the requirements of Part D.

EPA intends to follow the same policy for using funding restrictions to obtain

[5] EPA has discovered a few areas where it disapproved a Part D plan but neglected to reimpose the Section 110(a)(2)(I) ban. EPA intends to publish notices imposing the ban in these areas as soon as possible after it issues this policy.

new plans that is outlined above for areas that did not submit Part D plans. The rationale for approving revised plans described in that section will also apply to these areas.

(iii) *Plan submitted but no final action by EPA.* For these areas, too, the Section 110(a)(2)(I) moratorium is in effect and will remain in effect until EPA approves a plan as meeting the Part D requirements.

Before EPA and the States can take further action on these plans, EPA must complete its review of the submitted revisions. EPA has proposed action on all of these plans. It currently intends to take final action or, if necessary, to propose different action no later than December 31, 1983. If EPA approves a plan, it will remove the Section 110(a)(2)(I) ban. If EPA disapproves a plan, it will propose funding restrictions as described above in the Section on areas that did not submit Part D plans.

If a State chooses to withdraw a plan before EPA takes final action, EPA will return the plan and proceed under the policy described above for areas that did not submit Part D plans.

(d) *Areas With Approved and Implemented 1979 Plans That Probably Attained.* EPA did not propose to disapprove plans or impose restrictions for these areas on February 3. EPA, however, will continue to monitor air quality data for these areas to determine whether they did attain the standards. If EPA discovers a violation of the standard for which the area is designated nonattainment, EPA will propose to find the plan to be inadequate and call for a plan revision as described above for areas which failed to attain.

These areas may request redesignation to attainment any time that they can submit data meeting EPA's policy requirements. For more information on these requirements, *see* the April 21, 1983 memorandum "Section 107 Designation Policy Summary", from Sheldon Meyers to EPA Regional Air Directors.

2. *Nonattainment Areas With Attainment Date Extensions*

Part D required areas with attainment date extensions for ozone or carbon monoxide to submit plan revisions in 1979 and again in 1982. Either or both of these plan revisions may be deficient.

(a) *1979 Plan Revisions.* None of EPA's February 3 proposals addressed the 1979 plans for extension areas. Nevertheless, these plans may suffer from some of the deficiencies described above. An area may have failed to fulfill a condition of approval or may have failed to submit a portion of a plan. EPA may have disapproved a portion of a 1979 submittal. If EPA finds such deficiencies, it will follow the policies outlined above for nonextension areas.

Extension areas may also have failed to carry out approved portions of their 1979 plans. On August 3, 1983 (48 FR 35312), EPA proposed to find that eleven areas were not implementing approved schedules for motor vehicle inspection/maintenance programs. EPA proposed to restrict construction and funding under Sections 173(4) and 176(b). EPA will publish similar proposals if it finds other implementation failures.

(b) *1982 Plan Revisions.* EPA has proposed action on all 1982 plans for extension areas. The second set of notices published on February 3 contained EPA's proposals for 27 of the 31 States that have areas with attainment date extensions.

(i) *Plans submitted and proposed for approval.* EPA did not propose any construction or funding restrictions for plans which it proposed to approve. EPA currently intends to consider all comments and publish final approvals by March 1, 1984.

In some areas, EPA may find it necessary to change its course and disapprove a plan. Where disapproval will require a reproposal, EPA plans to publish the new proposal by March 1. EPA expects to take final action on any reproposal by September 30, 1984. If EPA disapproves the plan, it will proceed as described below.

(ii) *Plans submitted and proposed for disapproval.* EPA intends to take final action on all proposed disapprovals early next year. Where circumstances warrant, EPA will issue a new proposal and complete its action before the end of next year. Disapproval of a 1982 plan will trigger a construction ban under Section 110(a)(2)(I).

EPA wants to encourage areas where plans are disapproved to submit revised plans meeting the Part D requirements. Accordingly, EPA will consider restricting highway and air grant funding under Section 176(a). EPA will propose restrictions where it finds that an area has not made reasonable efforts to submit an approvable plan. If EPA proposes restrictions, it may defer action for up to one year if an area commits to an expeditious schedule for the submittal of new revisions.

Once EPA imposes construction and funding restrictions, it will lift them only when it approves or promulgates a plan as meeting the Part D requirements for extension areas.

(iii) *Plans not submitted.* In many cases EPA evaluated and proposed action on draft plans. Some States have not yet submitted final plans containing adopted control measures and official commitments. EPA cannot approve plans that do not contain adopted, enforceable measures and commitments. If an area fails to submit its final plan before EPA's internal deadline for final action, EPA will disapprove on the ground that the area failed to meet the Part D requirements for 1982 plans. This disapproval will trigger a construction moratorium under Section 110(a)(2)(I). It may also lead to funding restrictions under Section 176(a) as described above.

EPA will remove any construction or funding restrictions when it approves a final submittal as meeting the applicable Part D requirements.

(iv) *Areas that do not implement approved plans or portions of plans.* Areas with approved plans or portions of plans will be subject to restrictions for failure to implement if they fail to carry out their plans. EPA will monitor closely all approved schedules for the submittal of additional control measures. EPA will also monitor compliance by stationary sources. It will propose findings of nonimplementation and construction and funding restrictions under Sections 173(4) and 176(b) as soon as it sees significant slippage.

3. *Newly-Discovered Nonattainment Areas With and Without Extensions*

(a) *Deadlines for plans and attainment.* EPA has concluded that Congress intended that newly-discovered nonattainment areas should meet the Part D requirements, but have a reasonable amount of time to do so. Accordingly, EPA intends to require newly discovered nonattainment areas to follow the time periods, but not the dates, from Section 110(a)(2)(I) and Part D. Any new nonattainment area will have one year to develop a Part D plan. To obtain approval, that plan must "provide for" attainment as expeditiously as practicable, but no later than five years after the date of the nonattainment designation.

Although EPA does not expect a significant number of new ozone and carbon monoxide nonattainment areas which will be unable to attain standards in five years, an attainment date extension can be granted provided that an area can show that it is impossible to attain carbon monoxide or ozone standards despite the implementation of all reasonably available control measures. The extension is not automatic; it must be requested and it must be accompanied by a demonstration of need that is forwarded with the initial Part D submittal. The

extension may provide up to five additional years to provide for attainment. Areas that receive extensions will have to submit supplemental SIP revisions no later than four and one-half years from the date of the designation.

(b) *Consequences of failures to submit plans.*

• *Construction ban.* Under 40 CFR 52.24(k), a Section 110(a)(2)(I) ban will apply eighteen months after the date of the designation in any area designated nonattainment after July 1, 1979, unless the area has in effect an approved or conditionally approved Part D plan. This ban will apply automatically, but EPA intends to publish in the **Federal Register** a notice advising the area that the ban has come into effect.

Approval of an initial plan as meeting the Part D requirements will lift the ban. Disapproval will maintain or impose the ban. Disapproval of a supplemental submittal for an extension area will also maintain the ban (or impose it, if EPA approved the initial submittal).

• *Funding restrictions for ozone, carbon monoxide and nitrogen dioxide plans.* If an ozone, carbon monoxide or nitrogen dioxide area fails to make reasonable efforts to submit either an original or supplemental Part D revision, EPA will propose funding restrictions under Section 176(a). It the area commits to a schedule for submitting a plan revision, EPA may postpone action on final restrictions for as much as one year.

• *Funding restrictions for plans for other pollutants.* To ensure timely submittal of plans for newly-designated nonattainment areas for other pollutants, EPA will issue a notice of inadequacy and call for a plan revision under Section 110(a)(2)(H) at the time it redesignates the area as nonattainment. If the area fails to submit an approvable Part D plan, EPA will be in a position to find that the area is not implementing its SIP and to propose funding restrictions under Section 176(b) and construction restrictions under Section 173(4).

(c) *Consequences of not implementing approved plans or not attaining.* If EPA approves the Part D plan for a newly discovered nonattainment area, but the area subsequently fails to implement its plan, EPA will propose a finding of nonimplementation as described above in the discussion of 1979 plans that fails to implement. Similarly, if an approved plan fails to bring about attainment by the applicable deadline, EPA will propose a finding of inadequacy under Section 110(a)(2)(H).

(d) *Remedial actions for areas designated nonattainment after July 1, 1979, but before the publication of this policy.* A few areas were designated nonattainment after July 1, 1979, but before the publication of this policy. EPA intends, to the extent possible, to put these areas on equal footing with areas designated nonattainment in the future. For example, EPA will approve qualifying extension requests that accompanied an area's first Part D submittal. Also, where uncertainty about this policy caused a construction ban to come into effect because EPA failed to act on a Part D plan submittal, EPA will move as quickly as possible to act on the plan. If EPA approves the plan, it will remove the moratorium. If the plan is disapproved, the moratorium will continue.

At the same time, EPA wants these newly-discovered nonattainment areas to face the same consequences for failing to submit plans. Accordingly, for nonattainment areas for non-transportation related pollutants, EPA will treat the February 3 proposed disapprovals as proposed findings of inadequacy. This will allow EPA to issue a final finding of inadequacy and propose construction and funding restrictions under Sections 173(4) and 176(b) if an area misses its deadline for submittal of a Part D plan.

C. Other Issues

1. *Definition of "Reasonable Efforts" in Section 176(a)*

EPA's April 1980 policy states that EPA will determine whether a State is making "reasonable efforts" to submit a Part D plan on a case-by-case basis. In making such decisions, EPA will consider the legislative history of Section 176(a). This history suggests that Congress did not intend the funding restrictions to apply in areas unable to meet the 1982 or 1987 attainment deadlines, if those areas make reasonable attempts to provide for attainment. *See* 123 Cong. Rec. S9437–S9439 (June 10, 1977).

2. *Scope of Restrictions on Clean Air Act Funding under Sections 176(a) and (b)*

As mentioned in Section II of this notice, on August 3, 1983 EPA asked for comment on the idea of using funds withheld under Section 176(b) to implement the part of a plan that a State is not implementing. EPA cannot take a final position on this issue until it reviews all comments. If EPA decides that this approach is feasible under Section 176(b), it may use a similar approach under Section 176(a), using funds withheld for EPA promulgation.

3. *Section 316(b) Funding Restrictions*

EPA has discretionary authority under Section 316(b) to restrict sewage treatment funding where an area does not have a Part D plan in effect or is failing to carry out its SIP. EPA may propose to add Section 316 restrictions in areas where further inducements to action are needed. EPA is currently reviewing its August 11, 1980 policy (45 FR 53382) regarding implementation of Section 316. The 1980 policy, however, will remain in effect until revised or rescinded. The revised policy will reflect the current construction grants programs and identify those types of situations where sanctions could be imposed. Any revision will be proposed and will seek public comment by notice in the Federal **Register**.

4. *Section 113(a)(5) Construction Ban*

Section 113(a)(5) gives EPA discretion to impose a construction ban for nonimplementation. EPA intends generally not to exercise this authority. Section 173(4) covers most of the cases that Section 113(a)(5) covers. In addition, imposition of a ban in the remaining cases, where the company has received a construction permit already, would be unnecessarily unfair, except in extreme cases of nonimplementation. For example, EPA might consider using this section where a State issues a permit in violation of a construction ban.

5. *Emissions Trading*

Current EPA policy allows existing-source emissions trades in nonattainment areas lacking adequate attainment demonstrations 47 FR 15076 (April 7, 1982). EPA, however, is re-examining that policy. On August 31, 1983 (48 FR 39580), EPA requested further comment on several issues concerning this interim emissions trading policy, including whether, and under what circumstances, EPA should approve existing-source trades in nonattainment areas that lack fully or conditionally approved Part D plans or in areas with approved plans that missed the 1982 deadline.

EPA invited all interested persons to submit comments before October 31, 1983, in response to the August 31, 1983, emissions trading notice. EPA will evaluate all comments on this issue as quickly as possible after the close of that comment period. EPA expects to announce its position on this issue in both the guidance for correction of Part D SIP's and the final emissions trading policy.

In the interim, existing sources considering trades in such areas should

be aware that EPA has requested comment on grand-fathering issues. However, sources that traded might eventually be subject to additional emission reduction requirements needed to brung an area into attainment, depending upon the control strategy which the State selects.

6. *Pending Review of Standards*

EPA must enforce all existing standards unless and until they are revised. However, to accommodate concerns about the pending review of the particulate matter standard, EPA will consider approving revised plans that consist of enforceable schedules that phase in the adoption and implementation of controls for particulate matter sources. States will be able to address sources of smaller particles first. EPA, however, does not intend to allow any particulate matter nonattainment area to relax existing requirements under this policy.

V. Final Actions

EPA is taking only two final actions today. First, EPA is promulgating a rule that sets out the Agency's new view of the legal consequences of a failure to attain by the deadlines in Part D. Specifically, EPA is amending 40 CFR 52.24(a) to clarify that the Section 110(a)(2)(I) ban does not apply in nonattainment, nonextension areas with fully approved Part D plans that failed to attain by December 31, 1982. This amendment also provides that the moratorium will not apply in extension areas with fully approved 1979 and 1982 Part D submittals.

Second, EPA is withdrawing its proposal to amend 40 CFR 52.24(k). This will continue to postpone construction bans for eighteen months in areas designated nonattainment after July 1, 1979.

EPA regards these actions as interpretive rules of nationwide scope and applicability that restate some of the Act's requirements for all nonattainment areas. Consequently, they are effective upon publication. Under Section 307(b), any petition for review of these actions must be filed in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the date this notice appears in the **Federal Register.**

VI. Miscellaneous

A. Executive Order 12291 and Regulatory Flexibility Act

Under Executive Order 12291, the final actions EPA is taking today are not "Major" because they have no immediate impact in any area. In addition, they limit the scope of the construction ban under the Clean Air Act. The actions have been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection in the docket.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As noted above, today's final actions do not impose construction bans or have any other impacts on any small entities. Consequently, the Agency certifies that today's action has no significant impacts.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Sections 101, 107, 110, 116, 171–178, 301(a) and 316 of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416, 7501–08, 7601(a), and 7616); Section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95–95, 91 Stat. 685 (August 7, 1977).

Dated: October 27, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

1. Section 52.24 is amended by revising paragraph (a) to read as follows:

§ 52.24 Statutory restriction on new sources.

(a) After June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area as designated in 40 CFR Part 81, Subpart C ("nonattainment area") to which any State implementation plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I, of the Clean Air Act, as amended (42 U.S.C. 7501 *et seq.*) ("Part D"). This section shall not apply to any nonattainment area once EPA has fully approved the State implementation plan for the area as meeting the requirements of Part D.

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[FR Doc. 83-29725 Filed 11-1-83; 8:45 am]

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H.R. 3044/Pub. L. 98-138

To grant the consent of the Congress to an interstate agreement or compact relating to the restoration of Atlantic Salmon in the Connecticut River Basin, and to allow the Secretary of Commerce and the Secretary of the Interior to participate as members in a Connecticut River Atlantic Salmon Commission. (Oct. 28, 1983; 97 Stat. 866) Price: $1.75