

11-8-83
Vol. 48 No. 217
Pages 51275-51424

Registered Federal

Tuesday
November 8, 1983

Selected Subjects

Administrative Practice and Procedure
Postal Rate Commission

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Antibiotics
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Brokers
Customs Service

Carpools
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Conflict of Interests
Federal Deposit Insurance Corporation

Government Procurement
General Services Administration

Grant Programs—Housing and Community Development
Housing and Urban Development Department

Hazardous Waste
Environmental Protection Agency

Income Taxes
Internal Revenue Service

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

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

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Motor Vehicle Safety

National Highway Traffic Safety Administration

National Banks

Comptroller of Currency

Radio and Television Broadcasting

Federal Communications Commission

Railroads

Interstate Commerce Commission

Reporting and Recordkeeping Requirements

Civil Aeronautics Board

Drug Enforcement Administration

Federal Communications Commission

National Highway Traffic Safety Administration

Securities

Securities and Exchange Commission

Surface Mining

Surface Mining Reclamation and Enforcement Office

Water Pollution Control

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Title 3—

Proclamation 5124 of November 3, 1983

The President

National Diabetes Month, 1983

By the President of the United States of America

A Proclamation

Diabetes mellitus is a chronic disease that now threatens the lives of approximately 11 million Americans. Although careful treatment can control many of the short-term metabolic effects of diabetes, the disease is also associated with serious long-term complications that affect the eyes, kidneys, nerves, and blood vessels of the heart, brain, and extremities. In addition to its devastating toll in terms of human suffering, the cost of medical care for diabetic patients and associated losses due to disability and premature mortality now exceed \$10 billion annually in the United States alone.

Fortunately, the outlook for clinical advances related to the diagnosis, treatment, cure, and, ultimately, the prevention of diabetes and its complications has never been as promising as it is today. Recent research advances have included the synthetic production of purified human insulin to ensure adequate supplies of this essential hormone, the development of improved methods for insulin administration, new technologies for monitoring critical blood sugar levels, new therapies for the treatment of diabetes-related kidney, eye, and cardiovascular diseases, and improved clinical capabilities for reducing the increased perinatal morbidity and mortality associated with diabetic pregnancies.

In addition, remarkable advances have also been made in developing procedures that permit the successful transplantation of insulin-producing cells into diabetic animals without the need for chronic suppression of the immune system. As these and related studies are extended to humans, they may lead directly to the development of a cure for some of the most serious types of diabetes and to a means to prevent, arrest, or reverse the long-term complications of this disease.

Recent advances in basic biomedical research are providing new insights into the multiple causes of diabetes. We anticipate that these studies will help to identify individuals at risk for developing diabetes so that we may ultimately develop approaches that will prevent the disease and its complications altogether. Basic and clinical research advances have significantly reduced diabetes-related morbidity and mortality and have measurably improved the quality of life for people with diabetes. Nevertheless, much remains to be done before the cure and prevention of diabetes and its complications become a reality. Toward this goal, the Federal government, in cooperation with the private sector, will continue in the same determined spirit to lead the way toward eliminating diabetes as a major public health problem both for current and future generations.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with Senate Joint Resolution 121, do hereby proclaim the month of November, 1983, as National Diabetes Month, and I call upon all government agencies and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of November, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-30290

Filed 11-4-83; 12:31 pm]

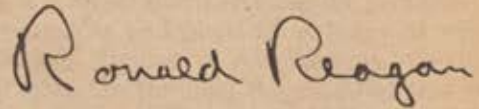
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Presidential Documents

Notice of November 4, 1983

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy and economy of the United States constituted by the situation in Iran. Notices of the continuation of the national emergency were transmitted by the President to the Congress and the **Federal Register** on November 12, 1980, November 12, 1981, and November 8, 1982. Because our relations with Iran have not yet been normalized and the process of implementing the January 19, 1981 agreements with Iran is still underway, the national emergency declared November 14, 1979 must continue in effect beyond November 14, 1983. Therefore, pursuant to section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am so continuing the national emergency with respect to Iran declared on November 14, 1979. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 4, 1983.

[FR Doc. 83-30318

Filed 11-4-83; 3:13 pm]

Billing code 3195-01-M

Presidential Documents

Proclamation 5125 of November 4, 1983

National Reye's Syndrome Week, 1983

By the President of the United States of America

A Proclamation

Reye's Syndrome is a serious illness that may attack the brain and liver of a child recovering from influenza, chicken pox, or some other viral infection. The cause of this disease—which affects an estimated 600 to 1,200 children in the United States each year—is unknown.

The first signs of Reye's Syndrome in a child are repeated vomiting, fatigue, and general irritation. The disease may progress to a life-threatening stage. If early symptoms are recognized and treated promptly, however, it is less likely that the disease will cause dangerous brain swelling, coma, or death.

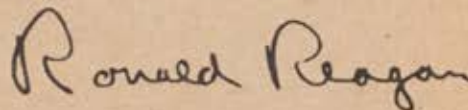
New treatments are being developed to help victims of Reye's Syndrome recover. This improved outlook is a direct result of scientific research carried out by public and private investigators and physicians, many of whom are supported by the American Reye's Syndrome Associations, the National Reye's Syndrome Foundation (Ohio), the National Reye's Syndrome Foundation (Michigan), and the United States Public Health Service. Within the Public Health Service, the Centers for Disease Control, the Food and Drug Administration and the National Institutes of Health are carrying out research projects and constant surveillance of cases.

Much still remains to be learned about Reye's Syndrome. Coordinated research is needed to find better ways to treat this disorder and ultimately to prevent it. Public education is also essential, because parents and physicians can help to protect the Nation's children from its lethal effects if they learn to recognize this disease in its earliest stages.

To enhance the public's awareness of the gravity of Reye's Syndrome, the Congress, by Senate Joint Resolution 34, has designated the week of November 7 through November 13, 1983, as "National Reye's Syndrome Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 7, 1983, as National Reye's Syndrome Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

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



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Presidential Documents

Executive Order 12448 of November 4, 1983

Exercise of Authority Under Section 218 of Title 18, United States Code

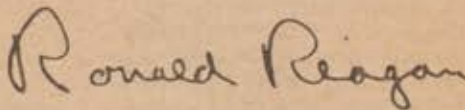
By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 218 of title 18 of the United States Code, and in order to provide federal agencies with the authority to promulgate regulations for voiding or rescinding contracts or other benefits obtained through bribery, graft or conflict of interest, it is hereby ordered as follows:

Section 1. The head of each Executive department, Military department and Executive agency is hereby delegated the authority vested in the President to declare void and rescind the transactions set forth in section 218 of title 18 of the United States Code in relation to which there has been a final conviction for any violation of chapter 11 of title 18.

Sec. 2. The head of each Executive department and agency described in section 1 may exercise the authority hereby delegated by promulgating implementing regulations; provided that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration jointly shall issue government-wide implementing regulations related to voiding or rescission of contracts.

Sec. 3. Implementing regulations adopted pursuant to this Order shall, at a minimum, provide the following procedural protections:

- (a) Written notice of the proposed action shall be given in each case to the person or entity affected;
- (b) The person or entity affected shall be afforded an opportunity to submit pertinent information on its behalf before a final decision is made;
- (c) Upon the request of the person or entity affected, a hearing shall be held at which it shall have the opportunity to call witnesses on its behalf and confront any witness the agency may present; and
- (d) The head of the agency or his designee shall issue a final written decision specifying the amount of restitution or any other remedy authorized by section 218, provided that such remedy shall take into consideration the fair value of any tangible benefits received and retained by the agency.



THE WHITE HOUSE,
November 4, 1983.

The Board of Directors of the Corporation of the City of New York, in and to which the City of New York has been incorporated, do hereby certify that the following are the Rules and Regulations of the Corporation of the City of New York, as amended from time to time, and as the same may appear from the records of the Corporation of the City of New York.

ARTICLE I
Section 1. The Corporation of the City of New York shall be known as the Corporation of the City of New York, and shall have the right to sue and be sued, to contract, to hold real and personal property, to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 2. The Corporation of the City of New York shall have the right to acquire, hold, lease, convey, and dispose of real and personal property, and to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 3. The Corporation of the City of New York shall have the right to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 4. The Corporation of the City of New York shall have the right to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 5. The Corporation of the City of New York shall have the right to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 6. The Corporation of the City of New York shall have the right to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 7. The Corporation of the City of New York shall have the right to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Section 8. The Corporation of the City of New York shall have the right to make and alter its by-laws, and to do all such other acts and things as may be necessary or proper for the carrying out of its purposes and objects.

Rules and Regulations

Federal Register

Vol. 48, No. 217

Tuesday, November 8, 1983

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Nonimmigrant Classes; Temporary Alien Employees; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final Rule; Correction.

SUMMARY: This document corrects a final rule on temporary alien employees that appeared on page 41146 in the Federal Register of Wednesday, September 14, 1983 (48 FR 41142). The action is necessary to correct a typographical error contained in a citation in § 214.2(l)(2).

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT:

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION:

§ 204.2 [Corrected]

The following correction is made in FR Document 83-24980 appearing on page 41146 in the issue of Wednesday, September 14, 1983.

1. On page 41146 at the bottom of column 3, "§ 204.2(h)" is corrected to read "§ 204.2(j)."

(Sec. 214 of the Immigration and Nationality Act, as amended (8 U.S.C. 1184))

Dated: November 2, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

(FR Doc. 83-30168 Filed 11-7-83; 8:45 am)

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 30

[Docket No. 83-50]

Real Estate Loans Made by National Banks; Validation and Enforcement of Due-On-Sale Clauses

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This regulation's purpose is to confirm the Congressional validation and revalidation of due-on-sale clauses in real estate loans originated or acquired by national banks. The final rule's effect, with certain exceptions, is that such clauses are fully enforceable, regardless of any limitations contained in state law impairing the enforceability of these clauses, with respect to transfers of property occurring after the effective date of the regulation. An exception to this rule states that, until April 15, 1984, banks must permit assumptions at or below a blended rate on loans secured by liens on one- to four-family dwellings that were made or assumed at a time when state law clearly limited the enforceability of due-on-sale clauses. This blended rate is the average of a market rate and the contract rate.

EFFECTIVE DATE: December 8, 1983.

FOR FURTHER INFORMATION CONTACT:

Francis S. Rath or Jerome Edelstein, Attorneys, Legal Advisory Services Division, (202) 447-1880, or David Nebhut, Financial Economist, Economic and Policy Analysis Division, (202) 447-1924, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Special Analysis

The Secretary of the Treasury has expressly exempted this regulation from the requirement of preparing a regulatory flexibility analysis, since it would not have a significant economic impact on a substantial number of small entities. For new loans, it would serve only to confirm Congressional preemption of state law. For existing loans, this action would expand the lending alternatives realistically available to all national banks, large

and small, operating in states limiting the enforceability of due-on-sale clauses. To the extent the regulation would validate or revalidate these clauses in loans originated or assumed while state law restrictions on the enforcement of due-on-sale clauses were applicable, it will provide the banks with some of the value they may have expected to realize from their contractual agreements with borrowers. Thus, there would be no differential effect of this regulation on small entities, and the effect on all affected national banks is beneficial.

The Office of the Comptroller of the Currency has determined that this regulation is not a major rule within the meaning of E.O. 12291, and, therefore, no regulatory impact analysis is required. This Office has determined that the regulation (1) will not have an annual effect on the economy of \$100 million or more; (2) will not impose major increases in costs or prices on consumers, individual industries, federal, state, or local government agencies, or geographic regions; and (3) will not result in 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.

Background and Analysis

A number of states have laws, either in the form of judicial decisions or in the form of statutes, limiting the enforceability of due-on-sale clauses in real estate loans. These laws generally provide that enforcement of the clauses will not be allowed unless the lender can demonstrate that its security is impaired by the transfer of the property.

In response to the limitations on the enforceability of due-on-sale clauses, the Office of the Comptroller of the Currency ("OCC") published on September 23, 1981, at 46 FR 46984, a proposed regulation ("1981 proposal"). That proposal would have made due-on-sale clauses in loans originated or purchased by national banks fully enforceable except for window-period loans. Window-period loans were defined as loans made or assumed between the date on which state law, by statute or judicial decision, impaired the enforceability of such clauses and the date of final promulgation of the

regulation. The 1981 proposal would have prohibited enforcement of the due-on-sale clauses in these window-period loans. Except for certain loans, the 1981 proposal would also have expressly preempted any state law on the subject of enforceability of due-on-sale clauses insofar as those laws related to loans held by national banks. The preamble to the 1981 proposal gives a detailed analysis of the reasons for the OCC's proposals as well as the rationale used to limit the enforceability of due-on-sale clauses. See 46 FR 46964. That analysis is also applicable to the present regulation.

OCC received nearly 1,100 comments on the 1981 proposal. The majority of comments came from individual homeowners or purchasers and from real estate brokers who generally (although not uniformly) opposed the regulation. The opposition was to any regulation limiting the assumability of real estate loans. A substantial portion of the commenters incorrectly believed that the OCC's regulation would bar assumptions of loans that were made as assumable loans—e.g., FHA-insured or VA-guaranteed loans and other loans not having a due-on-sale provision. There were a few comments from individuals suggesting a partial shifting of the market-rate risk of long-term lending by such expedients as limiting the enforceability of due-on-sale clauses to loans outstanding for more than a certain amount of time or requiring assumptions at a blended rate. The comments from the banking industry (approximately 20 per cent of the letters) generally supported OCC's proposal. The 1981 proposal was withdrawn on May 31, 1983, at 48 FR 24089.

Sometime after OCC published its 1981 proposal, Congress began consideration of federal preemption of state laws limiting the enforceability of due-on-sale clauses. This deliberation resulted ultimately in section 341 of the Garn-St Germain Depository Institutions Act of 1982 (the Act) (Pub. L. 97-320), which established a broad preemptive rule concerning due-on-sale clauses.

Section 341 states generally that, notwithstanding state-law limitations, due-on-sale clauses in real estate loans, regardless of when originated, are to be enforceable according to their terms as to transfers occurring after the date the Act became effective (October 15, 1982). This general rule is not applicable to loans made during the "window-period"—i.e., the period beginning with passage of a state statute or rendering of a judicial decision of statewide applicability restricting the enforceability of due-on-sale clauses,

and ending with the effective date of the Act. Due-on-sale clauses in such window-period loans will be enforceable only after the lapse of three years from the passage of the Act, unless a different rule is established by the appropriate authority. Under section 341(c)(1)(A) of the Act, the OCC has authority to issue rules that will apply to national banks. Similar authority is given to the National Credit Union Administration Board for federal credit unions and to state legislatures for state-chartered financial institutions. In addition, the OCC also has ample power based on the other provisions of law cited in the "Authority" section of this proposed regulation to issue preemptive regulations concerning the enforceability of window-period loans.

The Act also lists a number of types of transfers for which enforcement of due-on-sale clauses will not be allowed and, except for provisions of the Act relating to window-period loans, gives general interpretive authority to the Federal Home Loan Bank Board. Rules implementing section 341 of the Act have been published by the Federal Home Loan Bank Board at 48 FR 21554 (May 13, 1983) and the National Credit Union Administration at 47 FR 54424 (December 3, 1982). Several states have also acted or are considering acting pursuant to the Act.

On July 7, 1983, at 48 FR 31232, the Office of the Comptroller of the Currency published a proposed regulation to confirm the Congressional validation and revalidation of certain due-on-sale clauses. The proposal would, with certain exceptions, make such clauses fully enforceable. An exception to this general rule requires national banks to permit assumption at or below a blended rate on certain loans originated or assumed in specified states during a certain period.

The OCC received and evaluated 68 comments from individuals and organizations. Several commenters submitted more than one comment letter. Of the comments received which expressed opinions, 33 generally supported the proposal or the enforceability of due-on-sale clauses while 31 generally opposed the proposal. Two comments from national banks implied that the writers misunderstood the proposal and thought that the proposal would, until April 15, 1984, invalidate existing enforceable due-on-sale clauses. One of the commenters opposing the regulation misunderstood the proposal and thought that the proposal applied to loans made by savings and loan associations. Four

comments neither supported nor opposed the regulations.

The Office received 16 comments from members of the general public and 12 from realtors. These comments opposed the regulation and comprised the majority of those in opposition. There were also 26 comments from national banks (24 of these were in favor of the regulation while two neither supported nor opposed it). Several of the national banks in favor of the proposal suggested that full enforcement be permitted earlier than the enforcement date. The Office also received 13 comments from trade associations or other organizations (eight of these were in favor of the regulation, three opposed it and two had no opinion). In addition, one comment in favor of the regulation was received from a state bank.

The OCC has considered the comments and has decided to adopt the regulations substantially as proposed. As discussed below, in light of the comments certain amendments were made to the regulation where it was deemed appropriate.

Several comments were received regarding the dates chosen for the window period. These comments have brought to the Office's attention various statutes, cases or interpretations dealing with the window period dates in several of the states listed.

In light of the comments and further analysis and in order to promote, to the extent possible, uniformity between the OCC and secondary market lenders, three of the window-period dates have been amended in the final rule: (1) For Arizona, the opening date is changed to July 8, 1971, (2) for Minnesota, the opening date is changed to June 1, 1979, and the closing date is changed to May 8, 1981, and (3) for Iowa, the opening date is changed to July 1, 1979. In addition, Mississippi has been removed from the list of states contained in § 30.1(b)(3). The primary purpose of OCC's choice is to resolve by a distinct, explicit, and substantive rule the question of which due-on-sale clauses shall have only limited enforceability. The choices, while generally coinciding with those suggested by the legislative history and state statutes or judicial decisions, are based on analysis conducted independently by the OCC and were made to effectuate the distinct purpose of giving effect to the conflicting expectations of the parties concerning the enforceability of due-on-sale clauses. In adopting this approach, the OCC has relied on its rulemaking and interpretive authority as stated in the "Authority" section of the regulation.

The final regulation also states that, on loans secured by liens on one- to four-family dwellings that were made or assumed at a time when state law clearly limited the enforceability of due-on-sale clauses, national banks must, until April 15, 1984, permit assumption at or below a blended rate. National banks are not required to raise the interest rate to this blended rate but may, at their option, do so. This blended rate is the average (arithmetic mean) of the contract rate and market rate as defined by a specified national index. Due-on-sale clauses in commercial mortgage loans, however, are fully enforceable upon the effective date of the regulation.

This blended rate represents a compromise between the conflicting expectations of borrowers and lenders regarding the potential enforceability of due-on-sale clauses in window-period loans. In light of comments received concerning this blended rate, the OCC has amended the regulation to require that calculation of the blended rate be based on the most recently available index as of the date the bank commits to the assumption or, if the property is transferred prior to such commitment, the date the loan is assumed. Several comments suggested the use of a regional instead of a national index. However, the FHLBB publishes the results of the monthly survey of terms on conventional home mortgages only as a national average and as an average for selected metropolitan areas. Therefore, the OCC has decided to retain the use of the national index.

Several commenters requested a clarification of what constitutes creditworthiness pursuant to § 30.1(b). The commenters generally suggested that the guidelines set forth in the FHLBB's regulation be adopted. In light of these comments, to clarify the rights which national banks may exercise regarding credit standards and to ensure that different interpretations do not arise which may be used to circumvent this regulation, § 30.1(b)(2) of the final regulation has been amended.

Comments were also received concerning the types of loans covered by the regulation. In the OCC's view, a loan is assumable at no greater than a blended rate pursuant to this regulation only if it is of the specific category of loan to which state legislative action or judicial decision applied in prohibiting the exercise of due-on-sale clauses. For example, if, in a particular state enforcement of due-on-sale clauses is restricted only in certain loans, such as loans below a certain dollar amount, a loan would be assumable pursuant to

this regulation at no greater than the blended rate only if the loan is below that dollar amount and subject to the state law restriction. Loans above that dollar amount are not window-period loans for purposes of this regulation and due-on-sale clauses in such cases are fully enforceable. The regulation has been amended to clarify this position.

Some commenters also questioned the general authority of the OCC to issue this regulation. The wording of section 341(c)(1)(A) granting rulemaking authority to the OCC concerning window-period loans is definitive and unambiguous: "the Comptroller of the Currency * * * may, by regulation * * *, otherwise regulate such contracts. * * *". Despite this clear statement, certain comments in the legislative history of the Act suggest doubt as to whether the Act is an independent source of the Comptroller's authority. See, e.g., S. Rep. No. 97-536, 97th Cong., 2d Sess. 23-24 (1982); 128 Cong. Rec. S 12,235-36 (daily ed. Sept. 24, 1982) (remarks of Senator Garn). The question of whether section 341 is an independent grant of authority to OCC, however, is not material to the validity of the regulations being issued by OCC. Regardless of OCC's authority under section 341, the OCC has ample power, based on the other provisions of law cited in the "Authority" section of the regulation, to issue preemptive regulations concerning the enforceability of due-on-sale clauses in real estate loans made by national banks, and this power has not been displaced by the Act, at least with respect to window-period loans. See *Conference of State Bank Supervisors v. Lord*, 532 F. Supp. 694 (D.D.C. 1982), *aff'd*, *Conference of State Bank Supervisors v. Conover*, — F.2d — (Doc. No. 82-1303, June 30, 1983).

The proposed rule covered loans made or purchased by a national bank. Several comments regarding this provision questioned the appropriateness of requiring that due-on-sale clauses in loans made or assumed during specified periods and acquired by a national bank on or before October 15, 1982, shall be enforceable as if the loan had been originated by a national bank. Under the regulation as proposed, only if the loan had been acquired by a national bank on or after October 15, 1982 would the enforceability of the due-on-sale clause be determined by regulations governing the originating lender. In light of the comments, the Office has decided to amend § 30.1(d). This amendment is consistent with the legislative history of the Act which indicates that the identity

of the lender at the time the loan was originated is the determinative factor regardless of the date the loan was acquired. See S. Rep. No. 97-536, 97th Cong., 2d Sess. 24 (1982). Further, enforcing due-on-sale clauses in accordance with laws and regulations which govern the originating lender more closely comports with the expectations of the parties.

Some commenters requested that the effective date of this regulation be made retroactive to a date prior to the publication of the regulation. In order to accomplish the purposes of this regulation, the Office believes that prospective application is sufficient and it is not necessary to require banks and borrowers to alter transfers which occurred prior to the effective date of this regulation, as would be required if the regulation were effective retroactively. Therefore, the effective date of the final regulation will not be retroactive.

Several commenters suggested that window-period loans made by national banks in their fiduciary capacity for a trust be treated as if the loan were made by the bank itself. After reviewing these comments, the Office has decided not to amend the proposal to treat such loans in this manner. In such instances the loans are, in effect, being made by the trust and not the national bank. Therefore, loans made by national banks in their fiduciary capacity will be subject to the laws or regulations that would be applicable if the loan were made directly by the trust itself.

Several commenters also suggested that the regulation contain a definitional section. The Office has decided not to place such a section in the regulation since the regulation presently contains a sufficient explanation of the terms and concepts involved. However, in light of these comments, a sentence has been added to § 30.1(a) to clarify the use of the term "lender." In addition, the term "mobile homes" in § 30.1(a) has been changed to "residential manufactured homes" in response to these comments.

Finally, § 30.1(b) (i), (ii) has been amended to affirm the right of a bank to require increased payments on an assumed loan to reflect the new interest rate. Other minor technical changes have also been made in order to clarify the regulation.

In the final regulation, the following provisions are applicable to national banks:

General Rule: With certain exceptions, all due-on-sale clauses in real property loans made or held by national banks shall be valid and

enforceable for transfers occurring after the effective date of the regulation.

Exceptions: (a) Due-on-sale clauses in real property loans secured by one-to-four-family dwellings originated or assumed in certain states during specified periods shall not be enforceable prior to April 15, 1984. Upon the assumption of such loans, a national bank may raise the interest rate upon assumption to a blended rate. This exception is only applicable to due-on-sale clauses the enforceability of which is impaired by state law. (b) Due-on-sale clauses shall not be enforceable according to the terms of the contract in the case of transfers described in subsection (d) of section 341 of the Act, as interpreted by the Federal Home Loan Bank Board. (c) Due-on-sale clauses made or assumed during specified periods shall be enforceable only to the extent such clauses would be enforceable if the loan were still held by the originating lender.

List of Subjects in 12 CFR Part 30

Real estate loans, Due-on-sale clauses, National banks.

For the reasons set out in the preamble, 12 CFR Chapter I is amended by adding a new Part 30 to read as follows:

PART 30—REAL ESTATE LOANS

§ 30.1 Due-on-sale clauses.

(a) **General Rule.** A national bank may make or acquire through purchase, assignment, pledge or otherwise, a loan, secured by a lien on real property, that includes a clause, known as a due-on-sale clause, giving the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise. Except as set forth in paragraphs (b), (c), and (d) of this section, such clauses in loans, whenever originated, shall be valid and enforceable as to transfers of the secured property occurring after the effective date of this Part notwithstanding any contrary law or judicial decision of any state, including the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam, which laws and judicial decisions are hereby expressly preempted. For the purposes of this Part, (1) real property shall also include such residential dwellings as condominium units, cooperative housing units and residential manufactured homes and (2)

the term "lender" means a government agency or person, including corporations, partnerships, trusts or associations, making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency.

(b) **Special Rule for Certain Due-on-Sale Clauses Subject to Disabilities Under State Law.** For purposes of this paragraph, the term "assumed" shall include transfers of the lien property subject to the mortgage or similar lien.

(1) Except as provided in paragraph (c) of this section, with respect to due-on-sale clauses in real property loans secured by liens on one- to four-family residential dwellings originated or assumed in the states and during the periods enumerated in paragraph (b)(2) of this section and which are otherwise subject to state law limitations on the enforceability of due-on-sale clauses: (i) National banks may fully enforce such clauses for transfers occurring after April 15, 1984; and (ii) upon transfers occurring on or prior to April 15, 1984, but after the effective date of this regulation, banks shall permit the loan to be assumed on all the terms and conditions set forth in the original loan contract except that the interest rate may be increased to a blended rate and payments may be changed to reflect this rate. Such blended rate shall be any rate less than or equal to the average (arithmetic mean) of the rate specified in the original loan contract and the most recently available value of the monthly national average contract interest rate charged by all major lenders on mortgage loans for previously occupied homes, as published by the Federal Home Loan Bank Board in its *Journal* on the date the bank commits to the transferee to permit an assumption, substitution of liability, or similar agreement for the loan, or, if the lien property is transferred prior to such commitment, the date the loan is assumed.

(2) Notwithstanding the provision of (b)(1) of this section, (i) a national bank or its transferee owning a loan affected by this paragraph (b) may require any successor or transferee of the borrower to supply credit information customarily required by the lender in connection with credit applications, to complete its customary credit application and to meet its customary credit standards applicable to loans secured by similar property. The lender may declare the loan due and payable pursuant to the terms of the contract (A) upon a transfer to any successor or transferee of the borrower who fails to meet the lender's customary credit standards or (B) if upon transfer of the property securing

the loan and not later than fifteen days after written request by the lender, the successor or transferee of the borrower fails to provide information requested by the lender pursuant to this subsection to determine whether such successor or transferee of the borrower meets the lender's customary credit standards.

(ii) The lender shall, within thirty days of the receipt of a completed credit application and any other related information provided by the successor or transferee of the borrower, determine whether such successor or transferee meets the customary credit standards of the lender and provide written notice to the successor or transferee of its decision, and, in the event of disapproval, the reasons therefor. Failure of the lender to provide such notice shall preclude the lender from exercising of its due-on-sale clause upon the sale or transfer of the property securing the loan.

(3) Real property loans made or assumed in the following states, during the following periods, and subject to state law limitations on the enforceability of due-on-sale clauses shall be affected by the special rule contained in (b)(1) of this section:

- (i) Arizona: July 8, 1971, to October 15, 1982;
- (ii) Arkansas: June 19, 1972, to October 15, 1982;
- (iii) California: August 25, 1978, to October 15, 1982;
- (iv) Colorado: July 1, 1975, to October 15, 1982;
- (v) Georgia: July 1, 1979, to October 15, 1982;
- (vi) Iowa: July 1, 1979, to October 15, 1982;
- (vii) Michigan: January 5, 1977, to October 15, 1982;
- (viii) Minnesota: June 1, 1979, to May 8, 1981;
- (ix) New Mexico: March 15, 1979, to October 15, 1982;
- (x) Utah: May 12, 1981, to October 15, 1982; and
- (xi) Washington: August 19, 1976, to October 15, 1982.

(c) **Exceptions.** Due-on-sale clauses shall not be enforceable according to the terms of the contract in the case of transfers described in subsection (d) of section 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), as interpreted by the Federal Home Loan Bank Board pursuant to the powers granted to it in paragraph (e) of that section.

(d) **Exceptions for Purchased Loans.** Due-on-sale clauses in real estate loans made or assumed in the states and during the periods specified in paragraph (b)(3) of this section and

subject to state law limitations on enforceability shall be enforceable by national banks only to the extent such clauses would be enforceable under applicable legal standards if the loan continued to be held by the originating lender.

Authority: 12 U.S.C. 1 *et seq.*; Sec. 341(c), Pub. L. 97-320, 96 Stat. 1505 (12 U.S.C. 1701-3(c)); Sec. 403, Pub. L. 97-320, 96 Stat. 1510-11 (12 U.S.C. 371(a)); Sec. 706, Pub. L. 96-221, 94 Stat. 188 (12 U.S.C. 93a).

Dated: September 16, 1983.

C. T. Conover,

Comptroller of the Currency.

(FR Doc. 83-30294 Filed 11-7-83; 9:45 am)

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ANE-25; Amdt. 39-4755]

Airworthiness Directives; Allison Gas Turbine Operation/Detroit Diesel Allison (Allison) Model 250-C30 and -C30S Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires repetitive inspection, cleaning of turbine shafts and couplings, and replacement of spur adapter gearshaft O-ring on Allison Model 250-C30 and -C30S engines. The AD is needed to prevent excessive oil carbonizing deposit buildup on turbine shafting that can cause shaft rub and possible shaft or coupling failures. This could lead to turbine overspeed and/or uncontained turbine wheel failures with possible subsequent damage to aircraft.

DATES: Effective November 8, 1983. Compliance Schedule—as prescribed in body of AD.

Incorporation by Reference—Approval of the Director of the Federal Register on October 31, 1983. Effective on November 8, 1983.

ADDRESSES: The applicable service bulletin may be obtained from Allison Gas Turbine Operations, General Motors Corporation, Indianapolis, Indiana 46206-0420.

A copy of the service bulletin is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 83-ANE-25, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except federal

holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Royace Prather, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone 312-694-7132.

SUPPLEMENTARY INFORMATION: The FAA has determined that a damaged or wrong Part Number O-ring between the spur adapter gearshaft and turbine-to-compressor shaft joint can reduce the oil flow through the concentric gap between the gas producer and power turbine shafts on affected Allison Model 250-C30 and -C30S engines. The reduced oil flow can cause the shafting temperature to increase to the carbonizing temperature of the oil. Subsequent deposits of carbon on the turbine shafts and couplings can build until rub occurs. Continued rub could cause coupling or shaft failure. This could lead to turbine overspeed and/or uncontained turbine wheel failures with possible subsequent damage to aircraft. Since this condition is likely to exist or develop on other affected engines, an airworthiness directive is being issued which requires repetitive inspection, cleaning of turbine shafts and couplings, and replacement of spur adapter gearshaft O-ring on certain Allison Model 250-C30 and -C30S Engines.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

Allison Gas Turbine Operations/Detroit Diesel Allison (Allison): Applies to all Model 250-C30 and -C30S engines installed in, but not limited to, Sikorsky S-76A rotorcraft.

Except:

1. New production engines with serial numbers CAE 890748 and subsequent.
2. Existing Model 250-C30 and -C30S engines which have incorporated all of the following Allison Commercial Engine Bulletins (CEB):

250-C30, -C30S CEB 72-3096 Engine, Turbine-Exhaust Collector Modifications
250-C30, -C30S CEB 72-3100 Engine, Compressor Assembly, Spur Adapter Gearshaft—modified by adding Three Slots in Bore and Plugging Oil Feed Hole
250-C30, -C30S CEB 72-3103 Engine, Turbine Assembly, Turbine to Compressor Coupling Shaft-Replace

Compliance is required as indicated unless already accomplished.

To prevent carbon buildup on turbine shafts and couplings that can cause shaft rub and subsequent shaft or coupling failures leading to possible overspeed and/or uncontained turbine wheel failures accomplish the following:

1. Compliance with paragraph (3) is required, unless already accomplished, within the next 50 hours time in service or the next 60 days, whichever occurs first, after the effective date of this AD if either:

a. Turbine assemblies were installed without a new P/N AS3085-018 spur adapter gearshaft O-ring; or

b. Turbine maintenance procedures delineated in Allison Commercial Service Letter 250-C30 Series CSL 3042, Revision 2 dated May 26, 1983, were not complied with in the last 250 hours time in service.

2. Compliance with paragraph (3) is required for affected engines with turbine assemblies that had maintenance procedures performed in accordance with Allison CSL 3042, Revision 2 dated May 26, 1983, within 300 hours time in service since compliance with CSL 3042.

3. Inspect, clean turbine shafting/couplings, and replace P/N AS3085-018 spur adapter gearshaft O-ring in accordance with Allison Commercial Engine Alert Bulletin CEB-A-72-3108, Revision 1 dated October 15, 1983, or later revisions approved by the Manager, Propulsion Branch, Chicago Aircraft Certification Office, Part I accomplishment instructions. Repeat inspection and applicable maintenance procedures thereafter at intervals not to exceed 300 hours time in service per Part II accomplishment instructions of CEB-A-72-3108.

4. Special flight permits may be issued in accordance with FAR's 21.197 and 21.199 to operate aircraft to a base where compliance with this AD can be accomplished.

5. Upon request of the operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Allison Gas Turbine Operations, General Motors Corporation, Indianapolis, Indiana 46206-0420. These documents also may be examined at the Office of Regional Counsel, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays except federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective November 8, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983; 14 CFR 11.89)

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

Issued in Burlington, Massachusetts, on October 18, 1983.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 83-30186 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 211

[Reg. ER-1365, Economic Regulations; Amdt. No. 15 to Part 211]

Applications for Permits to Foreign Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the Office of Management and Budget (OMB) has approved the information collection requirements contained in Part 211 of the Board's Economic Regulations governing the requirements for applying for foreign air carrier permits under section 402 of the Federal Aviation Act (49 U.S.C. 1372) through October 31, 1986. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: Adopted: November 3, 1983. Effective: October 24, 1983.

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

List of Subjects in 14 CFR Part 211

Air carriers, Air transportation—foreign.

PART 211—[AMENDED]

Accordingly, the Civil Aeronautics Board Amends Part 211 of its Economic Regulations (14 CFR Part 211) by adding a note at the end of the table of contents to Part 211 to read:

Note.—The information collection requirements contained in §§ 211.3 and 211.5 have been approved by the Office of Management and Budget under number 3024-0068.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-30186 Filed 11-7-83; 8:45 am]

BILLING CODE 6320-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Domestic Exchange Traded Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of effective date of rule amendment.

SUMMARY: On September 16, 1983, the Commodity Futures Trading Commission ("Commission") published in the Federal Register an amendment to Regulation § 33.4(a)(6) which will permit each board of trade to be designated as a contract market for either two options on futures contracts, two options on physical commodities, or one option on a futures contract and one option on a physical commodity. 48 FR 41575. The Commission further indicated, however, that the amendment would not become effective until the expiration of 30 calendar days of continuous session of Congress after the transmittal of the rule amendment and related materials to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry and the publication in the Federal Register of a notice of the effective date of the rule amendment.

The Congressional review period specified in Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) has now expired. Accordingly, the

Commission now provides notice that the amendment to § 33.4(a)(6) of its regulations, as published at 48 FR 41575 (September 16, 1983) became effective on October 29, 1983.

EFFECTIVE DATE: October 29, 1983.

FOR FURTHER INFORMATION CONTACT: George L. Garrow, Jr., Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

Issued in Washington, D.C. on November 2, 1983 by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-30140 Filed 11-7-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

[T.D. 83-232]

Change of Policy Relating to Customhouse Brokers' Charges for Incidental Services

AGENCY: Customs Service, Treasury.

ACTION: Change of policy.

SUMMARY: This document changes, for one year, Customs policy with regard to the results of a failure by a customhouse broker to provide a client an itemized accounting of the cost of any incidental service the broker may arrange for the client. Formerly, any variance between the amounts actually expended for these items and the broker's statement to his client which was not fully explained in the records required to be maintained by the broker for Customs inspection and audit, as well as the reasonableness of the variance, was considered to be an improper withholding from the client of information relating to Customs business and a failure to keep complete records. Under this policy change, Customs will no longer routinely inquire into the reasonableness of the charges for incidental services arranged by a broker for a client. As noted above, the policy change will be effective for one year, after which Customs will evaluate its experience under the modified policy and decide whether to make the policy change permanent. The public is requested to submit any applicable comments to Customs during that year. Those comments will be considered before a final decision in the matter is made. The change in policy is being made in order to narrow Customs role

regarding brokers to those activities which are exclusively Customs-related. In addition, the change will permit Customs to utilize its limited resources more effectively. For Customs to attempt to penetrate modern day business relationships between broker and client, compounded by current day technologically advanced automated accounting systems, is not considered an effective and efficient utilization of its limited resources. Finally, the change in policy is consistent with the Administration's posture concerning governmental regulation of private business transactions.

EFFECTIVE DATE: This policy change is effective November 8, 1983. Public comment on the change must be received on or before November 8, 1984.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commission of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Raymond F. Mulhern, Regulatory Audit Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202 566-2812).

SUPPLEMENTARY INFORMATION:

Background

A "customhouse broker" is licensed by the Customs Service to transact Customs business on behalf of his clients. The Customs Service is authorized by section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111, Customs Regulations (19 CFR Part 111), to license brokers and supervise their activities.

A broker's bill to his client often includes charges for "incidental services", such as freight, storage, cartage, cooperage, dock and messenger service, insurance, or bonds, which are arranged by the broker on behalf of his client.

These incidental services are in addition to the primary Customs-related function of entry documentation and duty payment performed by brokers for their clients.

Current Policy: Treasury Decision 78-308

Under Treasury Decision 78-308, published in the *Federal Register* on September 15, 1978 (43 FR 41192), the records maintained by brokers for Customs inspection and audit, are required to set forth an itemized accounting of the costs incurred by them for incidental services. Customs reviews those records and makes limited inquiries into the reasonableness of such

charges billed by brokers to their clients only in cases in which:

1. The difference between the cost of an incidental service to the broker and the amount billed to the client has not been identified (itemized) separately on billings to the client; or

2. The client has not been provided, in advance of importation, with a written itemized quotation of the charges for the incidental service, following which the client has authorized the broker to handle the importation.

If a broker is unable to justify, in either of the above cases, substantial or "unreasonable" differences in billings between clients for like services, based on normal, accepted business practices, such as volume discounts, special circumstances, or the like, those differences would constitute a discrepancy. District directors of Customs, after a determination that a charge is unreasonable, are required to notify the broker of the apparent discrepancy and recommend an appropriate change. Differences between costs incurred by a broker for incidental services and amounts billed to clients for such services which are not itemized in the broker's records, constitute a failure to keep complete records (see §§ 111.21, and 111.22, Customs Regulations (19 CFR 111.21, 111.22)).

Reasons for Change in Policy

Customs has determined that a policy change is necessary because the relationship between a broker and client in regard to acceptance of charges is inherently the responsibility of the client acting as a normal prudent businessman. The change in policy is being made in order to narrow Customs role regarding brokers to those activities which are exclusively Customs-related, and will permit Customs to utilize its limited resources more effectively.

Accordingly, Customs will continue to require that brokers maintain as part of their records of Customs transactions available for Customs inspection and audit, an itemized accounting of the costs incurred by them for incidental services. However, Customs now will inquire into the reasonableness of a charge for an incidental service that a broker bills his client only when a specific complaint about a charge is received from a broker's client, or in those cases where Customs believes that an inquiry is necessary to substantiate or disapprove an allegation (whether of a specific or general nature) or a belief of possible misconduct on the part of a broker.

Change of Policy

Brokers shall continue to maintain for Customs inspection records of the costs incurred by them for "incidental services", such as freight, storage, cartage, cooperage, dock and messenger service, insurance, or bonds, arranged by the brokers for their clients, for which the brokers bill the clients. However, Customs will inquire into the reasonableness of brokers' charges to their clients for an incidental service only when (1) a complaint of unreasonableness about a specific charge is received from a broker's client, or (2) an inquiry is considered by Customs to be necessary to substantiate or disprove an allegation (whether of a specific or general nature) or a belief of possible misconduct on the part of a broker.

This change of policy will be effective for one year, during which Customs invites public comment on the change. At the end of that period, Customs will consider any written comments received and evaluate its experience under the policy change in accord with the criteria listed below before deciding whether to make the change permanent. The criteria that will be used to evaluate the policy change will include, but are not limited to, the following:

1. Number of complaints received from the public during the one year period;
2. Results of inquiries performed as a direct consequence of the complaints received;
3. Public comments received during the one year period; and
4. Results of audits performed of selected brokers to determine the degree of cost impact to the importing public. The degree of cost impact will be based on billed amounts for incidental services during the test period as opposed to billed amounts during the preceding year.

Comments

Before making this policy change permanent, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This policy change is made under the authority of R.S. 251, as amended, secs. 624, 641, 46 Stat. 759, as amended (5 U.S.C. 301; 19 U.S.C. 66, 1624, 1641).

Executive Order 12291

The change of policy does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Therefore, no regulatory impact analysis has been prepared.

Inapplicability of Notice and Delayed Effective Date

Because the document is a general statement of policy, it has been determined that pursuant to 5 U.S.C. 553 (b)(A) and (d)(2), the notice and delayed effective date provisions of 5 U.S.C. 553 (b) and (d) are not applicable.

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection.

Drafting Information

The principal authors of this document were Raymond F. Mulhern, Regulatory Audit Division, and Todd J. Schneider, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: September 6, 1983.

William von Raab,

Commissioner of Customs.

[FR Doc. 83-30296 Filed 11-7-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 430, 436, and 446**

[Docket No. 83N-0347]

Antibiotic Drugs; Tetracycline Hydrochloride for Topical Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a revised formulation of an antibiotic dosage form, tetracycline hydrochloride for topical solution. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 8, 1983; comments, notice of participation, and

request for hearing by December 8, 1983; data, information, and analyses to justify a hearing by January 9, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Joan M. Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the inclusion of accepted standards for a revised formulation of an antibiotic dosage form, tetracycline hydrochloride for topical solution. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 446 (21 CFR Parts 430, 436, and 446) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects**21 CFR Part 430**

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 446

Antibiotics, Tetracycline.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, and 446 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended in § 430.5 by adding new paragraph (b)(80), to read as follows:

§ 430.5 Definitions of master and working standards.

(b) * * *

(80) *4-Epitetracycline*. The term "4-epitetracycline working standard" means a specific lot of a homogeneous preparation of 4-epitetracycline.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by adding new § 436.340, to read as follows:

§ 436.340 High-pressure liquid chromatographic assay for tetracycline hydrochloride content and 4-epitetracycline hydrochloride content.

(a) *Equipment*. A suitable high-pressure liquid chromatograph equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder of at least 25.4-centimeter deflection;

(5) A suitable integrator; and

(6) A 30-centimeter column having an inside diameter of 4.0 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles.

(b) *Mobile phase*. Dissolve 0.55 gram of monobasic ammonium phosphate in 900 milliliters of water. Adjust the pH to 1.8 with concentrated phosphoric acid and dilute to 1 liter with water. Mix 800 milliliters of this solution with 200 milliliters of methanol. Filter the mobile phase through a suitable glass fiber filter that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatography pumping system.

(c) *Operating conditions*. Perform the assay at ambient temperature with a typical flow rate of 1.0 milliliter per minute. Use a detector sensitivity setting that gives a peak height for the 4-epitetracycline peak that is at least 50 percent of scale.

(d) *Preparation of working standard and sample solutions*—(1) *Working standard solution*. Accurately weigh approximately 18 milligrams of the tetracycline hydrochloride working

standard into a 50-milliliter volumetric flask. Into the same flask, accurately weigh approximately 38 milligrams of the 4-epitetracycline working standard. Dissolve and dilute to volume with a methanol:water mixture (7:18).

(2) *Sample solution.* Reconstitute the sample as directed in the labeling. Transfer 10.0 milliliters of the reconstituted sample into a 50-milliliter volumetric flask and dilute to volume with a methanol:water mixture (7:18).

(e) *Procedure.* Using the equipment, reagents, and operating conditions as listed in paragraphs (a), (b), and (c) of this section, inject 10 microliters of the

working standard solution into the chromatograph. Allow an elution time sufficient to obtain separation of the expected components. After separation of the working standard solution has been completed, inject 10 microliters of the sample solution into the chromatograph and repeat the procedure described for the working standard solution. The elution order is 4-epitetracycline followed by tetracycline.

(f) *Calculations.* Calculate the tetracycline hydrochloride and 4-epitetracycline hydrochloride content as follows:

$$\text{Milligrams of tetracycline hydrochloride per milliliter of sample} = \frac{A_1[(W_1 \times B) + (W_2 \times C)]}{A_2 \times 1,000}$$

$$\text{Milligrams of 4-epitetracycline hydrochloride per milliliter of sample} = \frac{A_3[(W_1 \times D) + (W_2 \times E)]}{A_4 \times 1,000}$$

where:

- A_1 = Area of the tetracycline sample peak (at a retention time equal to that observed for tetracycline in the tetracycline working standard);
 A_2 = Area of the tetracycline peak in the tetracycline working standard;
 A_3 = Area of the 4-epitetracycline sample peak (at a retention time equal to that observed for the 4-epitetracycline peak in the 4-epitetracycline working standard);
 A_4 = Area of the 4-epitetracycline peak in the 4-epitetracycline working standard;
 W_1 = Milligrams of the tetracycline working standard;
 W_2 = Milligrams of the 4-epitetracycline working standard;
 B = Percent tetracycline hydrochloride in the tetracycline working standard;
 C = Percent tetracycline hydrochloride in the 4-epitetracycline working standard;
 D = Percent 4-epitetracycline hydrochloride in the 4-epitetracycline working standard; and
 E = Percent 4-epitetracycline hydrochloride in the tetracycline working standard.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

3. Part 446 is amended in § 446.581c by revising the fourth through sixth sentences in paragraph (a)(1) and by revising paragraph (b)(1) to read as follows:

§ 446.581c Tetracycline hydrochloride for topical solution.

(a) * * *

(1) * * * The 4-epitetracycline

hydrochloride content is satisfactory if it contains not less than 135 percent and not more than 165 percent of the amount of tetracycline hydrochloride in the reconstituted solution at the time of reconstitution. The loss on drying of the dry mixture is not more than 5.0 percent. When reconstituted as directed in the labeling, its pH is not less than 1.9 and not more than 3.5. * * *

(b) * * *

(1) *Tetracycline hydrochloride content and 4-epitetracycline hydrochloride content.* Proceed as directed in § 436.340 of this chapter.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective November 8, 1983. However, interested persons may, on or before December 8, 1983, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this

document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 8, 1983, a written notice of participation and request for hearing, and (2) on or before January 9, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective November 8, 1983.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: November 1, 1983.

Philip L. Paquin,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 83-30120 Filed 11-7-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 436, 440, 442, 446, 448, 449, 452, and 546

[Docket No. 83N-0285]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making corrections, updates, and minor noncontroversial technical changes in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human and veterinary use. These changes will result in more accurate and usable regulations.

DATES: Effective November 8, 1983; comments, notice of participation, and request for hearing by December 8, 1983; data, information, and analyses to justify a hearing by January 9, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by making corrections, updates, and minor noncontroversial technical changes in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human and veterinary use. In two instances, the need for a change was called to FDA's attention by industry representatives. To aid in understanding the types of changes included in this document, the changes have been grouped into three general classes for discussion in this preamble: Monograph corrections, updating, and technical changes.

Monograph Corrections

1. In § 436.105(a), the last column of the table is corrected to replace the figure "37" with the figures "36-37.5" for the item "Cefotaxime." The specific incubation temperatures for all drugs were replaced with temperature ranges (see the Federal Register of March 13, 1981; 46 FR 16681). This correction for cefotaxime reflects this change.

2. In § 436.201(d), new paragraph (d)(5) is added to provide a sample preparation method for erythromycin

topical solution that was inadvertently omitted in the published monograph.

3. In § 442.225(c)(7), the words "Dissolve and" are added to the beginning of the first sentence.

4. In § 446.165d(a)(1), the last sentence is corrected to state the correct section reference.

5. In § 446.265(b)(4), part of the sentence is deleted. This information is provided for in the referenced section and is unnecessarily included in the monograph.

6. In § 448.513c(a)(1)(ii), "hydrocortisone acetate" is revised to read "hydrocortisone" to correctly identify the ingredient.

Updating

FDA is updating §§ 436.541(a), 440.108a(b)(3), 446.120c(b)(3), 446.167(b)(3), 446.181d(b)(3), 446.181e(b)(4), and 546.110d(b)(4) by making the following changes:

a. The exemption to the stirring blade height of the referenced United States Pharmacopeia dissolution test apparatus is deleted in § 436.541(a) with appropriate conforming amendments made to each affected monograph. This change provides for a general test method to be referenced as necessary for other antibiotic products.

b. The agency is transferring § 436.541 from Subpart H to Subpart E and recodifying it as § 436.215. This change correctly reflects the general applicability of this test method.

Technical Changes

1. In § 442.40(a)(1), the chemical name of cephradine in the first sentence is revised to be in agreement with the U.S. Adopted Names definition.

2. In § 449.340(a)(1), the pH range for natamycin ophthalmic suspension (6.0 to 7.5) is revised to read 5.0 to 7.5. The sole manufacturer has submitted adequate stability data to support the lower limit.

3. The agency is amending § 452.510b to accurately provide accepted standards for all products manufactured under this monograph, as follows:

(a) In paragraph (a)(1), the pH range is deleted and the moisture limit is revised from 8 percent to 2 percent for dosage forms containing acetone.

(b) In paragraph (a)(3)(i)(5), the pH test is deleted.

(c) In paragraph (b)(2), a modification to the referenced Karl Fischer moisture test is added for dosage forms containing acetone.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human

environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, Penicillin.

21 CFR Part 442

Antibiotics, Cepha.

21 CFR Part 446

Antibiotics, Tetracycline.

21 CFR Part 448

Antibiotics, Peptide.

21 CFR Part 449

Antibiotics Antifungal.

21 CFR Part 452

Antibiotics Macrolide.

21 CFR Part 546

Animal drugs; Antibiotics, Tetracycline.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350-351 [21 U.S.C. 357, 360b(n), 371 (f) and (g)]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 436, 440, 442, 446, 448, 449, 452, and 546 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Part 436 is amended:

§ 436.105 [Amended]

a. In § 436.105 *Microbiological agar diffusion assay*, the table in paragraph (a) is amended by changing "37" to "36-37.5" in the last column for "Cefotaxime."

b. In § 436.201, by adding new paragraph (d)(5) to read as follows:

§ 436.201 Moisture determination.

* * *

(d) * * *

(5) *Solutions.* Proceed as directed in paragraph (e)(3) of this section, using about 1 to 2 grams of the sample, accurately weighed.

* * *

c. By redesignating § 436.541 as § 436.215, by adding redesignated

§ 436.215 to Subpart E, and by revising § 436.215(a) as redesignated, to read as follows:

§ 436.215 Dissolution test.

Dissolution test.

(a) *Equipment.* Use Apparatus 2 as described in the United States Pharmacopeia XX dissolution test.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

2. Part 440 is amended in § 440.108a by revising paragraph (b)(3) to read as follows:

§ 440.108a Bacampicillin hydrochloride tablets.

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter, except in lieu of paragraph (d) of that section use the interpretation described in the United States Pharmacopeia XX dissolution test. The quantity, *Q* (the amount of ampicillin dissolved) is 85 percent at 30 minutes.

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

a. In § 442.40(a)(1), by revising the first sentence to read as follows:

§ 442.40 Cephadrine.

(a) *Requirements of certification—(1) Standards of identity, strength, quality, and purity.* Cephadrine is (6*R*, 7*R*)-7-[(*R*)-2-amino-2-(1,4-cyclohexadien-1-yl)acetamido]-3-methyl-8-oxo-5-thia-1-azabicyclo [4.2.0]oct-2-ene-2-carboxylic acid. * * *

b. In § 442.225c(b)(7), by revising the first sentence to read as follows:

§ 442.225c Cephalothin sodium for injection.

(b) * * *

(7) *Specific rotation.* Dissolve and dilute an accurately weighed portion of the dry mixture with sufficient distilled water to give a concentration of approximately 50 milligrams per milliliter. * * *

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

4. Part 446 is amended:

a. In § 446.120c, by revising paragraph (b)(3) to read as follows:

§ 446.120c Doxycycline hyclate tablets.

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter, except:

(i) In lieu of paragraph (a) of that section, a distance of 4.5 ± 0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test; and

(ii) In lieu of paragraph (d) of that section, use the interpretation described in the United States Pharmacopeia XX dissolution test. The quantity, *Q* (the amount of doxycycline dissolved) is 55 percent at 60 minutes and 85 percent at 90 minutes.

b. In § 446.165(a)(1), by revising the last sentence to read as follows:

§ 446.165d Oxytetracycline for oral suspension.

(a) * * *

(1) * * * The oxytetracycline used conforms to the standards prescribed by § 446.65(a)(1).

c. In § 446.167, by revising paragraph (b)(3) to read as follows:

§ 446.167 Oxytetracycline hydrochloride capsules.

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter, except in lieu of paragraph (a) of that section, a distance of 4.5 ± 0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

d. In § 446.181d, by revising paragraph (b)(3) to read as follows:

§ 446.181d Tetracycline hydrochloride tablets.

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter, except in lieu of paragraph (a) of that section, a distance of 4.5 ± 0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

e. In § 446.181e, by revising paragraph (b)(4) to read as follows:

§ 446.181e Tetracycline hydrochloride capsules.

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.215 of this chapter except in lieu of paragraph (a) of that section, a distance of 4.5 ± 0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

f. § 446.265, by revising paragraph (b)(4) to read as follows:

§ 446.265 Oxytetracycline Injection.

(b) * * *

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

5. Part 448 is amended in § 448.513c by revising paragraph (a)(1)(ii) to read as follows:

§ 448.513c Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment; bacitracin zinc-neomycin sulfate-polymyxin B sulfate hydrocortisone ointment.

(a) * * *

(i) * * *

(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin B with or without 10 milligrams of hydrocortisone.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

6. Part 449 is amended in § 449.340(a)(1) by revising the fifth sentence to read as follows:

§ 449.340 Natamycin ophthalmic suspension.

(a) * * *

(1) * * * Its pH is not less than 5.0 and not more than 7.5. * * *

PART 452—MACROLIDE ANTIBIOTIC DRUGS

7. Part 452 is amended in § 452.510b by revising the fifth sentence into two sentences in paragraph (a)(1) and by revising paragraphs (a)(3)(i)(b) and (b)(2) to read as follows:

§ 452.510b Erythromycin topical solution.

(a) * * *

(1) * * * If it contains 15.0 milligrams of erythromycin per milliliter, its moisture content is not more than 5.0 percent. If it contains 20.0 milligrams of erythromycin per milliliter, its moisture content is not more than 8.0 percent, except if it contains acetone, its moisture content is not more than 2.0 percent. * * *

(3) * * *

(i) * * *

(b) The batch for potency and moisture.

(b) * * *

(2) *Moisture*. Proceed as directed in § 436.201 of this chapter, except if the sample contains acetone, in lieu of Solvent A, use a mixture of pyridine and methanol (1:1).

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

8. Part 546 is amended in § 546.110d by revising paragraph (b)(4) to read as follows:

§ 546.110d Chlorotetracycline hydrochloride tablets.

(b) * * *

(4) *Dissolution*. Proceed as directed in § 436.215 of this chapter, except in lieu of paragraph (a) of that section, a distance of 4.5 ± 0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments, therefore, may become effective upon the date of publication in the *Federal Register*. However, interested persons may, on or before December 8, 1983, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file: (1) On or before December 8, 1983, a written notice of participation and request for hearing, and (2) on or before January 9, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data,

information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch.

Effective date. November 8, 1983.

(Secs. 507, 512(n), 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350-351 (21 U.S.C.) 357, 360b(n), 371(f) and (g))

Dated: November 2, 1983.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 83-30122 Filed 11-7-83; 9:45 am]

BILLING CODE 4190-01-M

21 CFR Part 440

[Docket No. 83N-0348]

Antibiotic Drugs; Bacampicillin Hydrochloride Tablets

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new strength of bacampicillin hydrochloride tablet. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 8, 1983; comments, notice of participation, and request for hearing by December 8, 1983; data, information, and analyses to justify a hearing by January 9, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.

4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new strength (800 milligrams; equivalent to 560 milligrams of ampicillin) of bacampicillin hydrochloride tablet. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 440 (21 CFR Part 440) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 440

Antibiotics, Penicillin.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 440.108a is amended by revising the second sentence in paragraph (a)(1) to read as follows:

§ 440.108a Bacampicillin hydrochloride tablets.

(a) * * *

(1) * * * Each tablet contains bacampicillin hydrochloride equivalent to either 280 or 560 milligrams of ampicillin. * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides

notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation therefore, is effective November 8, 1983. However, interested persons may, on or before December 8, 1983, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 8, 1983, a written notice of participation and request for hearing, and (2) on or before January 9, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submission under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date, November 8, 1983.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: November 1, 1983.

Philip L. Paquin,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 83-30121 Filed 11-7-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 26

[Docket No. N-83-1292]

Revised Effective Dates

Correction

In FR Doc. 83-28162 appearing on page 46980 in the issue of Monday, October 17, 1983, make the following correction. In column two, above the first paragraph, "PART 24—[AMENDED]" should read "PART 26—[AMENDED]".

BILLING CODE 1505-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 205, 207, 213, 221, 232, 241, 242, and 244

[Docket No. N-83-1301]

Announcement of Effective Dates

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

ACTION: Notice of announcement of effective dates for certain recently published final rules.

SUMMARY: This notice announces the effective dates for certain recently published final rules. Thirty calendar days of continuous session of Congress have expired since these rules were published.

EFFECTIVE DATE: November 7, 1983.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 7th Street SW., Washington,

D.C. 20410, telephone No. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published rules stated that the rules would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced the future notice of the rules' effectiveness would be published in the *Federal Register*. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published.

Accordingly, the purpose of this notice is to announce effective dates for the rules listed below:

24 CFR Parts 200 and 203

Mutual Mortgage Insurance and Rehabilitation Loans; Disaster Victims, Final Rule published September 27, 1983 (48 FR 44066), Docket No. R-83-1117.

Effective Date: November 7, 1983.

24 CFR Parts 205, 207, 213, 221, 232, 241, 242, and 244

Bonding Requirements; Multifamily Mortgage and Loan Insurance Programs Under the National Housing Act, Final Rule published September 27, 1983 (48 FR 44068), Docket No. R-83-1060.

Effective Date: November 7, 1983.

Dated: November 2, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-30237 Filed 11-7-83; 8:45 am]

BILLING CODE 4210-27-N

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-83-1005]

Community Development Block Grants; Correction

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Correction to a final rule.

SUMMARY: The Department published a final rule in the *Federal Register* on September 23, 1983 (48 FR 43538), which amends regulations governing the Community Development Block Grant program. This document corrects three errors appearing in the September 23, 1983 final rule.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

20410. Telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 23, 1983 (see 48 FR 43538) HUD published a final rule amending its Community Development Block Grant (CDBG) program regulations to reflect changes made in the Housing and Community Development Act of 1974 by the Housing and Community Development Amendments of 1980 (Pub. L. 96-399) and the Housing and Community Development Amendments of 1981 (Pub. L. 97-35). That final rule contained three errors, which this document corrects. The errors are described below.

In § 570.202, Eligible rehabilitation and preservation activities, paragraph (b)(8) is intended to cover the costs of acquiring tools to be lent to owners, tenants and others. The word "acquiring" was inadvertently omitted from the text.

In § 570.306, Housing assistance plan, the Department incorrectly referenced Fiscal Year 1983 in paragraph (d)(4), instead of Fiscal Year 1984. In this same paragraph [(d)(4)], the Department required that any Entitlement grantee which had not already submitted a HAP for the current fiscal year (as discussed above, incorrectly cited as 1983) to do so within 60 days of the effective date of the final rule. The rule became effective on November 2, 1983 (see effective date correction document published on October 17, 1983, 48 FR 46980). For clarity, the Department is inserting a date certain—December 30, 1983—into the text of the regulation, which is approximately sixty days from the effective date of the rule.

Accordingly, the following corrections are made in FR Doc. 83-25749 appearing on page 43538 and following in the issue of September 23, 1983:

PART 570—[AMENDED]

1. On page 43561, at the bottom of column 2, in § 570.202(b)(8), "cost of tools" is corrected to read "cost of acquiring tools".

2. On page 43566, at the top of column 1, in § 570.306(d)(4), "1983" is corrected to read "1984" the two times it appears and "[60 days from the effective date of this rule]" is corrected to read "December 30, 1983".

Dated: November 3, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-30210 Filed 11-7-83; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 883

[Docket No. R-83-1003]

Section 8 Housing Assistance Payments Program—State Housing Agencies

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

ACTION: Final rule.

SUMMARY: This rule generally prohibits State Agencies from transferring Fiscal Year 1982 and subsequent year Section 8 State Agency set-aside funding authority after initial assignment of such authority to a specific project. The rule is intended to promote more efficient use of Section 8 funds. If the Agency determines that funding authority from the set-aside cannot be used for the project to which it was originally assigned, the Agency must promptly notify HUD, and HUD will cancel and withdraw the contract and budget authority.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Steven E. Silvert, Acting Director, Office of State Agency and Bond Financed Programs, Room 6122, Department of Housing and Urban Development, Washington, D.C. 20410; (202) 755-8135 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 2, 1982, the Department published an interim rule (47 FR 33263), effective September 20, 1982, prohibiting transfer of a State Agency's Section 8 set-aside funding for Fiscal Year 1982 or subsequent years from one project to another.

Before the interim rule was effective, 24 CFR 883.207(c) allowed State Agencies, subject to certain limitations, to retain control of funding authority set-aside for their use under Section 8 of the United States Housing Act of 1937 when the State Agency determined that the authority could no longer be used for the project to which it was originally assigned. Where the Agency made its determination to terminate or reduce contract authority assigned to a particular project on or before the 45th day preceding the end of the Federal fiscal year, the portion of the set-aside cancelled or reduced would be released and made available for transfer to

another of the same Agency's projects, through the 45th day preceding the end of the same fiscal year. Where the Agency made its determination after the 45th day preceding the end of the Federal fiscal year in which the assignment to a particular project was made, the Agency could transfer the portion of the set-aside directly to another project or projects, if the Agency notified HUD, provided full information concerning the proposed transfer, and submitted a written assurance that an Agreement to Enter into Housing Assistance Payments Contract, executed by the Agency and the Owner, would be provided to HUD within nine months. If the Agency failed to submit the executed Agreement within nine months, transferred contract authority would be automatically terminated unless the deadline was extended by the Department.

This final rule, which reflects consideration of comments received on the interim rule, retains the interim rule's prohibition on transfer of Section 8 set-aside funds allocated in Fiscal Year 1982 or later. However, the rule has been changed to state that: (1) if the Agency determines that funding authority from the set-aside cannot be used for the project to which it was originally assigned, the Agency must promptly notify HUD; and (2) HUD will cancel the contract and budget authority. The final rule retains the current provisions of § 883.207(c) which permit State Agencies to control Section 8 set-aside authority assigned by HUD before Fiscal Year 1982.

During the sixty-day comment period, nine comments were received: five from State Agencies or State Governments and one each from the Council of State Housing Agencies, a metropolitan council of governments, a developer and a private individual.

Most of the commenters objected to the interim rule on the ground that its stated purpose—establishment of greater Federal control over use of Section 8 funding authority by State Agencies—is contrary to the Administration's philosophy of "New Federalism," i.e., the return of greater control of government programs to the States. HUD does not accept this argument and has decided to continue the policy contained in the interim rule.

Although the rule prohibits transfer of FY 1982 and subsequent year funding authority, it does not reduce the project selection prerogatives delegated to the Agencies. What the rule does, in effect, is to stress to State Agencies the need to exercise greater care in project selection and to encourage them to seek funding

reservations only for those projects with the greatest potential for reaching construction. In the past, some State Agencies reserved funds for marginally viable projects or for general areas. When the projects proved to be infeasible and other viable projects failed to materialize, the Agencies would cancel the reserved funds and hold the funds for eventual transfer to other projects, as was permitted under § 883.207(c). This practice resulted in delays in the construction of projects and, in some cases, concomitant higher costs caused by inflation, a reduction in the number of units which could be built, and an impairment to the Department's ability to make immediate and cost-effective use of limited Federal funds for other projects. This rule is necessary to prevent the adverse effects of such practices should future funding authority become available.

A second concern expressed in the comments was that State Agencies must have flexibility to reassign funds in order to take advantage of financing "windows." In past years, many of the delays in moving projects to construction were aggravated by financing problems encountered in the bond market. These problems have abated since the decline in interest rates has increased the availability of financing at reasonable rates and has reduced significantly the likelihood that projects will be delayed for extended periods of time because of the need for substantial cost- and finance-related project amendments. In addition, State Agencies may still use available Section 8 set-aside funding assigned before Fiscal Year 1982 for amendment purposes should financing or other problems arise.

The third issue raised by some commenters was whether or not the Department has statutory authority to implement this rule. Nothing in the enabling statutes mandates the allocation of Section 8 set-aside funding to State Agencies. Section 213(d)(3) of the Housing and Community Development Act of 1974 gives the Secretary discretionary authority to allocate funds to State Agencies by providing that "the Secretary may reserve such housing assistance funds as he deems appropriate for use by a State or agency thereof." Additionally, once a set-aside is made to a State Agency, there are neither statutory provisions nor other Congressional directives prohibiting the Department from canceling contract authority in appropriate situations. Current regulations for the State Agencies Section 8 Housing Assistance Payments

Program provide for such action by the Department. Section 883.207(a) provides that contract authority will be terminated as of the 45th day before the end of each Federal fiscal year if the State Agency has failed to assign the authority to projects on or before that date, unless the Assistant Secretary for Housing agrees in writing to extend the date. Section 883.207(b) and (c)(2) impose similar sanctions for projects which were processed under fast track procedures or which received contract authority transferred from other projects, if specified deadlines are not met. The Department has concluded that it is prudent and appropriate to broaden its use of its authority to cancel contract authority, in order to promote more efficient use of Section 8 funds.

Findings and Certifications

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

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

This rule was listed as item H-98-82 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because State Agencies—the direct participants in the program—are not small entities.

The Catalog of Federal Domestic Assistance Program number and title are 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 883

Grant Programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation.

Accordingly, for the reasons set out in the preamble, Subpart B of part 883 is amended as set forth below.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

Subpart B—Allocation and Assignment of Contract Authority

Section 883.207(c) revised to read as follows:

§ 883.207 Termination and transfer of set-asides.

(c) *Transfer of Set-Asides.* (1) Fiscal Year 1982 and subsequent years. An Agency may not transfer Contract and Budget Authority for Fiscal Year 1982 and subsequent years once the authority is assigned to a particular project, as defined in paragraph (a) of this section. Where an Agency assigned a specific portion of its Section 8 set-aside to a particular project and subsequently determines that the portion assigned cannot be used in whole or in part for that project, it shall promptly notify the Field Office of that fact, and the portion of the set-aside which cannot be used will be cancelled and withdrawn by HUD.

(2) Fiscal Years before 1982. Where an Agency assigns a specific portion of its Section 8 set-aside of contract authority for Fiscal Years before 1982 to a particular project, and subsequently determines that the portion assigned cannot be used for that project, it may retain use of that contract authority under the following rules.

(i) *Projects terminated or reduced on or before the 45th day before the end of the Federal fiscal year.* The Agency must notify HUD of any determination to terminate or reduce the contract authority assigned to a specific project. The portion of the set-aside cancelled or reduced will be released and become available for assignment to another project through the 45th day before the end of the same fiscal year.

(ii) *Project terminated or reduced after the 45th day before the end of the Federal fiscal year.* If the determination to terminate or reduce the contract authority assigned to a particular project

is made after the 45th day before the end of the Federal fiscal year in which the assignment was made to that project, the Agency may transfer the released portion of the set-aside to another project or projects. When transferring contract authority under this paragraph, the Agency must notify the HUD field office promptly after the determination is made that the transfer is to a specific project, and provide full and complete information concerning the proposed transfer, including names and locations of the projects involved, the specific amount of set-aside to be transferred, and a written statement of assurance that an Agreement, executed by the Agency and the Owner will be submitted to HUD within nine months. If an Agreement is not submitted within nine months, the transferred contract authority will be automatically terminated unless this deadline is extended in writing by the Assistant Secretary for Housing.

For proposals to which contract authority is assigned under the provisions of this paragraph (c), HUD will comply with the provisions of §§ 883.206(a)(4) and 883.206(b).

Authority: Sec. 213(d)(3), Housing and Community Development Act of 1974 (42 U.S.C. 1439); Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: November 1, 1983.

W. Calvert Brand,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 83-30208 Filed 11-7-83; 8:43 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW-7-FRL 2466-4]

Hazardous Waste Management Program: Phase I and II, Components A and B Interim Authorization Application—Missouri

AGENCY: Environmental Protection Agency, Region VII.

ACTION: Phase I Interim Authorization.

SUMMARY: The State of Missouri has applied for Interim Authorization for Phase I and II, Components A and B, of the hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act and EPA regulations for the approval of State hazardous waste program (40 CFR Part 123). EPA has determined that while the State's program meets all applicable statutory and regulatory requirements to operate

Phase I, it does not meet significant "substantial equivalency" criteria to allow it to operate Phase II, Components A and B. Accordingly, today EPA is granting Interim Authorization to Missouri for Phase I and is denying its application for Phase II, Components A and B. In granting Phase I Interim Authorization, EPA is delegating to the State of Missouri the authority to operate in its jurisdiction, a hazardous waste program in lieu of Phase I of the Federal hazardous waste program.

EFFECTIVE DATE: October 28, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Morby, Chief, Waste Management Branch, U.S. EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106 (Telephone 816/374-6531).

SUPPLEMENTARY INFORMATION

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), requires EPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. Once a federal program is established, EPA is authorized under 3006 of RCRA to approve State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State program approvals are authorized under RCRA. The first, "final authorization," is an approval which may be granted to States whose programs are "equivalent" to and "consistent" with the Federal program and provide adequate enforcement. The second, "interim authorization," is a temporary approval for States which might not meet the requirements of final authorization but whose programs are "substantially equivalent" to the Federal program. RCRA contemplates that States receiving interim authorization will use the period to make the changes in their program, regulations and statutes necessary to qualify for final authorization.

On May 19, 1980, EPA published the first phase of the Federal hazardous waste program (40 CFR Parts 260-263 and 265) and guidelines for authorizing State hazardous waste programs under Section 3006 of RCRA (40 CFR Part 271). These guidelines set forth the requirements for interim authorization and the procedures which EPA will follow in acting on State applications for interim authorization. They also provide that EPA will grant interim authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal program.

The State of Missouri submitted an application for Phase I and II, Components A and B on January 31, 1983. The application was determined to be administratively complete on March 17, 1983. A public comment period was announced in the *Federal Register* that date (48 FR 11301, March 17, 1983) with a public hearing scheduled for April 19, 1983. Subsequent in-depth reviews by Agency's legal staff, however, identified a significant oversight in State law with regard to the State's ability to enforce interim status standards. After discussing this with the State, Missouri requested a stay of the public comment period (48 FR 15167, April 7, 1983) to allow an opportunity for the Legislature to enact an appropriate statutory amendment. This subsequently occurred, and on July 28, 1983 the comment period was reinitiated (48 FR 34296, July 28, 1983). A public hearing was held on August 29, 1983.

Although the State of Missouri adequately addressed in the application, in subsequent comment letters and at the public hearing all issues involving Phase I delegation, the above-mentioned legislative session introduced into State law the concept of "lifetime permits," which presented an unresolvable barrier to Federal delegation of Phase II (40 CFR 270.50 and 40 CFR 271.14(p)). Since a legislative change will be required to correct this problem and to restore eligibility for Phase II, it was determined that approval for Phase I only would be considered and that Phase II would be re-considered as part of the application for final authorization.

A complete copy of all correspondence between the State and EPA Region VII which address the comments on regulations, law and procedures, may be obtained from the Regional Office upon request. The State responded orally to the comments of the Agency at the public hearing and confirmed those responses in writing on September 28, regarding the following issues:

(1) The Agency was concerned about State interpretation of law regarding "criteria" for hazardous wastes, as compared to the Federal "characteristics" designation. It was also concerned about the equivalency of the State's hazardous waste "listing". Both of these concerns were resolved by written statements from the Attorney General.

(2) This statement also resolved concerns about equivalency of State law regarding the exclusion of domestic sewage from hazardous waste regulation.

(3) The Attorney General has provided a written assurance that he/she will not oppose permissive intervention by any citizen in an enforcement action brought pursuant to §§ 260.350 to 260.430, RSMo, to seek remedies specified in 40 CFR 271.128 (f), (i), (ii), and (iii).

(4) The Attorney General has stated that the State term "waste" and the federal term "solid waste" are equivalent.

In addition, the remaining regulatory issues pertaining to generators and transporters were all corrected under amendments to regulations which became effective October 11, 1983.

II. Response to Public Comments

As a result of the Federal Register notices dated March 17, 1983 and July 28, 1983, inviting public comment on the Missouri application for Phase I and II Components A and B of interim authorization, two public comments were received. Both were from industry and both dealt with the Phase II issue of financial responsibility. Missouri's state regulations are more stringent than the federal regulations in that the financial test is not allowed. Both commentors objected to the lack of similarity between the two sets of requirements.

Since this is a Phase II issue and not part of this authorization action, these comments will be further considered as part of the final application review. No further comments were received prior to the close of the public comment period.

III. Decision

EPA has reviewed the State of Missouri's complete application for Phase I and II, Components A and B interim authorization. The Agency has determined that the Phase I portion is "substantially equivalent" as defined in 40 CFR Part 271, Subpart F, to the Phase I Federal program. In accordance with Section 3006(c) of RCRA, the State of Missouri is hereby granted interim authorization to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program. The practical effect of this decision is that generators, transporters, and owners and operators of existing hazardous waste management facilities in Missouri will be subject to the State of Missouri hazardous waste program in lieu of the Federal hazardous waste program (40 CFR Parts 260-263 and 265) and will not again be subject to Phase I of the Federal program unless (1) the State fails to obtain final authorization by the deadline specified in Section 3006(c) RCRA and its implementing regulations, or (2) authorization is withdrawn by EPA for cause.

Based on the Agency's review of the Phase II, Components A and B portion of the application, and the lack of substantial equivalency within 40 CFR 270.50 and 271.14(p) regarding permit duration, EPA is denying this portion of the application. This means that all permitting action will continue to be administered by EPA Region VII.

IV. Compliance With Executive Order 12291

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

V. Compliance With Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

VI. Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Waste pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: October 12, 1983.

Morris Kay,
Regional Administrator.

[FR Doc. 83-30167 Filed 11-7-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 5-2, 5-3, and 5-16

[APD 2800.2 CHGE 35]

Procurement by Formal Advertising, Procurement by Negotiation, and Procurement Forms

AGENCY: General Services Administration.

ACTION: Final rule

SUMMARY: The General Services Procurement Regulations, Chapter 5, are amended to prescribe new forms for the abstracting of bids, clarify statutory requirements for small business, small purchase set-asides, prescribe new rules for competition for contracts under \$500 and to lift the aggregate dollar limitation for blanket purchase arrangements. Other changes have been made to delete obsolete material, update information and correct inaccuracies. The intended effect is to improve the efficiency of the acquisition process.

EFFECTIVE DATE: November 1, 1983.

FOR FURTHER INFORMATION CONTACT: Richard H. Hopf, Director, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy (202-566-1224).

List of Subjects

41 CFR Part 5-2

Government procurement, and Procurement by formal advertising.

41 CFR Part 5-3

Government procurement, and Procurement by negotiation.

41 CFR Part 5-16

Government procurement, and Procurement forms.

41 CFR Chapter 5 is amended as follows:

PART 5-2—PROCUREMENT BY FORMAL ADVERTISING

1. The authority citation for 41 CFR Part 5-2 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

Subpart 5-2.4—Opening of Bids and Award of Contract

2. In § 5-2.402, paragraphs (i) and (j) are revised to read as follows:

§ 5-2.402 Opening of bids.

(i) When invitations for bids provide for the submission of bid bonds or like guarantees, arrangements shall be made by the contracting officer or the designee to have a bonded collection officer present when bids are opened to assume custody of guarantees other than bonds. The contracting officer shall retain bonds for checking acceptability. The contracting officer shall request the collection officer to return guarantees other than bonds to unsuccessful bidders in accordance with § 1-10.103-3. Bonds need not be returned.

(j) A record of persons attending each bid opening shall be maintained. This record shall include at least the names of persons present, firms or organizations represented, date and time of opening, and the solicitation numbers in which each person is interested. The record may be in any suitable form, such as appropriate notations on the reverse of GSA Form 289, Abstract of Bids. The record shall be made a part of the solicitation file.

3. In § 5-2.403, paragraph (a) is revised to read as follows:

§ 5-2.403 Recording of bids.

(a) The contracting officer shall be responsible for abstracting and tabulating all bids. (1) For Office of Federal Supply and Services (FSS) contracts, GSA Form 289, Abstract of Bids, and GSA Form 289a, Abstract of Bids (Continued), normally shall be used. However, when unusual circumstances require a specialized form for abstracting bids, GSA Form 289 need not be used. (2) For Office of Public Buildings and Real Property (OPR) contracts, GSA Form 3471 and GSA Form 3471A, Bid Abstract and Bid Abstract (Continuation Sheet), shall normally be used. As soon as possible, but not later than 24 hours after a notice of award has been dispatched to the contractor, a legible copy of the bid abstract, showing the award made shall be signed by the contracting officer or bid opening official, and furnished to the Business Service Center where it shall be made available for public examination for a minimum period of 30 calendar days.

PART 5-3—PROCUREMENT BY NEGOTIATION

4. The authority citation for 41 CFR Part 5-3 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

5. The Contents of Part 5-3 are amended by adding the following new entries:

Sec.
5-3.200 Scope of subpart.
5-3.605-70 GSA Forms.
5-3.606-52 Certified invoice procedure (supplies and services).

6. The Contents of Part 5-3 are amended by removing the following:

Sec.
5-3.270 Negotiation after termination for default. [Removed]
5-3.652 Oral purchases (supplies and services). [Removed]

7. In § 5-3.103, paragraphs (a) and (f)-(h) are revised; paragraph (i) is deleted. The text reads as follows:

§ 5-3.103 Dissemination of procurement information.

(a) The appropriate Business Service Center shall be furnished a copy, as issued, of each written request for proposals for a procurement estimated to exceed \$5,000.

(f) Information concerning unsuccessful offerors, including identity and pricing data, ordinarily will not be released. Determinations as to what information concerning unsuccessful offerors must be disclosed to the public are to be made in accordance with GSA Freedom of Information Act (FOIA) procedures (see GSA Order ADM 1035.11, January 15, 1981). After award of contracts under \$10,000, the names and dollar amount of unsuccessful offers normally may be released upon request without formal FOIA procedures.

(g) The provisions of § 5-2.407-1(b)(5) also apply to negotiated procurements.

(h) Awards are subject to the following notification requirements:

(1) Procurement activities shall notify the Business Service Center of all completed negotiated procurements that are to be published in the Commerce Business Daily in accordance with §§ 1-1.1004 and 5-1.1004.

(2) When notifications are made on small purchases of \$5,000 and above the appropriate Business Service Center shall be furnished copies of procurement documents or any other form of notification that will provide the Business Service Center with the significant details of the completed procurement actions.

8. Section 5-3.200 is added to read as follows:

§ 5-3.200 Scope of subpart.

Each negotiated contract shall cite, in the appropriate block of the award document, the authority under which the contract is negotiated, i.e., the Federal Property and Administrative Services Act of 1949, as follows: "41 U.S.C. 252(c)(*)" (* insert paragraph number under which negotiation is permitted). Cite any additional authority used; e.g. the Small Business Act (15 U.S.C. 637(a)).

9. Section 5-3.203 is revised to read as follows:

§ 5-3.203 Purchases not in excess of \$10,000.

(a) Section 302(c)(15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(15)) shall be cited as the negotiation authority for

small purchases which are reserved (set-aside) for small business in accordance with Pub. L. 95-507, October 24, 1978. When small purchases are not set-aside section 302(c)(3) of the Federal Property and Administrative Services Act of 1949, (41 U.S.C. 252(c)(3)) shall be cited unless § 1-3.206 applies.

(b) The full purchase price shall be used in determining whether the aggregate amount of a transaction exceeds \$10,000. Trade-in values may not be deducted.

§ 5-3.270 [Removed]

10. Section 5-3.270 is removed in its entirety.

11. In subpart 5-3.6—Small Purchases, § 5-3.600 is revised to read as follows:

§ 5-3.600 Scope of subpart.

The following limitations on small purchases are prescribed by this subpart:

(a) Small purchases shall be set aside for small business as provided in § 1-3.603-3 and as required by Pub. L. 95-507, October 24, 1978.

(b) Small purchases of supplies and materials by organizations other than the Office of Federal Supply and Services (see GSA Order APD 2800.10, dated April 29, 1982), in an aggregate amount of not more than \$10,000 may be effected under the provisions of Subpart 1-3.8 when either:

(1) The items required are not available from GSA stock, Federal Supply Schedules, term contracts, or through nearby GSA self-service stores.

(2) Public exigency precludes the use of GSA sources.

(c) Small business—small purchase set-aside contracts and all other small purchases must comply with all applicable statutory requirements, e.g., Service Contract Act, Davis-Bacon Act (see §§ 1-3.603-3, 1-12.9, and 5-1.706(a)).

12. Section 5-3.603-1 is revised to read as follows:

§ 5-3.603-1 Solicitation.

(a) Quotations on small purchases of the type described in § 5-3.600 above shall be solicited in writing for any procurement estimated to exceed \$5,000 (see § 1-3.603-1(d)).

(b) Quotations on small purchases of the type described in § 5-3.600 may be solicited orally (see § 5-3.5002) by telephone or by personal contact when:

(1) The estimated cost is \$5,000 or less, and

(2) The requirement is simple enough that it can be conveyed orally, with reasonable assurance that sources will submit quotations that are, in fact, on a

competitive footing, and in compliance with all statutory and regulatory requirements, and

(3) Service Contract Act or Davis-Bacon Act wage determination requirements do not apply to the services being procured.

(c) When written quotations are required (see § 1-3.603-1), one of the following forms shall be used.

(1) *Standard Form 18, Request for Quotation* (See § 1-16.201). Except as provided in (ii) below, this form shall be used for requesting written quotations. When it is considered advantageous to obtain a firm offer which, upon acceptance by the Government, results in a bilateral contract, the appropriate GSA or standard contract forms shall be employed.

(2) *GSA Form 3188, Request for Quotation* (See § 5-16.950-3188). GSA Form 3188 is authorized for use by the Office of Federal Supply and Services with the FSS-19 system in lieu of Standard Form 18.

(d) In an emergency, when a procurement is estimated not to exceed \$10,000 and a written solicitation is required, competition may be solicited by having prospective sources visit the site and by orally informing them, together, of the exact requirements, to enable the sources to prepare estimates for submitting quotations while the written solicitation is being prepared by the Government. The written solicitation must be issued before written quotations are received to allow prospective offerors to effect any necessary changes in the event that there has been any misunderstanding of the oral description of the work encompassed. Emergencies, for the purpose of this subsection, include situations which, if not corrected promptly, will result in unnecessary expenditure of funds, property damage, personal injury, serious loss of agency efficiency in operations, or interruption of agency functions, any of which could be avoided by immediate corrective action. For emergency procurements which exceed \$10,000, see § 1-3.202.

(e) Competition. (1) The criteria set forth below are designed to provide interested small business concerns an opportunity to participate in small purchases (see §§ 1-3.602(f) and 1-3.603-3 regarding small business—small purchase set-asides).

(2) When the estimated dollar amount does not exceed \$500, purchases may be accomplished on the basis of a currently verified quotation from a single supplier, if the price is reasonable and no significant advantage would result from soliciting additional suppliers. When practicable a quotation shall be solicited from other than the

previous supplier prior to placing a repeat order. Such purchases shall be distributed equitably among qualified suppliers.

(3) When the estimated dollar amount of the purchase exceeds \$500, efforts shall be made to solicit a sufficient number of qualified sources to ensure that there is adequate competition and that a reasonable price is received. Ordinarily, obtaining quotations from 2 or more sources will be considered adequate. When procuring similar items or services for which there are many qualified sources in active competition, the firms solicited shall be rotated or the number solicited should be increased to include the additional sources to the extent commensurate with the value of the purchase, the potential for additional price savings, and the additional administrative costs involved.

13. Section 5-3.603-2 is revised to read as follows:

§ 5-3.603-2 Data to support small purchases.

(a) *Imprest Fund*. Small purchases made through the imprest fund shall be documented as required by the Department of Treasury Manual of Procedures and Instruction for Cashiers Operating Under Executive Order No. 6166.

(b) *Other small purchases*. (1) When other than the lowest quotation is accepted, the reason(s) for rejecting any lower quotation shall be entered in the purchase case file.

(2) Purchasing activities shall establish small purchase source lists from a formal mailing list, established in accordance with § 1-2.205, trade publications, Thomas Register, and other comparable publications.

(3) Each small purchase file must include notes explaining how it was determined that the price is reasonable.

14. Section 5-3.603-50 is added to read as follows:

§ 5-3.603-50 Supplemental small purchase provision.

When GSA Form 300, Purchase Order, is used for small purchases (see § 5-1.7301(a)), the following provision shall be included:

SUPPLEMENTAL TERMS, CONDITIONS AND REVISIONS

This purchase is also subject to the Disputes clause in § 1-7.102-12 of the Federal Procurement Regulations (see FPR Temporary Regulation 55, May 23, 1980). If the purchase exceeds \$5,000, the following clauses also apply: (a) Changes (41 CFR 1-7.102-2), (b) Default (41 CFR 1-8.707), (c) Termination for Convenience of the Government (41 CFR 1-8.705-1), (d) Prompt Payment (FPR Temporary Regulation 66, October 5, 1982), and (e) the

last sentence in paragraph 3 of GSA Form 300. Purchase Order, is revised to read as follows: Payment is made, for discount purposes, as of the date of the check. These clauses are incorporated by reference as fully as if set forth at length herein.

(End of Provision)

15. In § 5-3.605-1, paragraph (b) is revised to read as follows:

§ 5-3.605-1 Standard Form 44, Purchase Order-Invoice-Voucher.

(b) *Authorization for using the form*. Where necessary, responsible employees may be authorized to make small purchases under \$150 using Standard Form 44 in accordance with this subpart. Purchases over \$150 using SF 44 may be made only by contracting officers. (See GSA Order ADM 2851.3, Establishment of GSA-wide Contracting Officer Warrant Program (COWP).)

16. Section 5-3.605-70 is added to read as follows:

§ 5-3.605-70 GSA forms.

Pending revision of the January 1980 edition of GSA Form 3184, GSA Stock Item Direct Delivery Order, and GSA Form 3186, Order for Supplies and Services, when either of these forms is used as a purchase order (i.e., not issued as a delivery order under a formal contract), paragraph 3, Discounts, on the reverse of the form shall be revised to be consistent with § 1-2.407-3. This may be accomplished by an attachment to the form, or by including a statement substantially as follows on the face of the form:

PARAGRAPH 3 ON THE REVERSE OF THE FORM IS DELETED, AND THE PROVISIONS OF 41 CFR 1-2.407-3 APPLY TO THIS PURCHASE ORDER.

17. Section 5-3.606-1 is revised to read as follows:

§ 5-3.606-1 General.

Purchases made under Blanket Purchase Agreements are subject to the requirements of small business—small purchase set-asides as set forth in § 1-3.603-3.

18. In § 5-3.606-4, the introductory text of paragraph (a) and paragraphs (a)(4)-(7) are revised; paragraph (a)(8) is removed; and paragraphs (b)-(d) are revised to read as follows:

§ 5-3.606-4 Documentation.

(a) *Provisions required*. Blanket purchase arrangements (BPAs) normally shall be documented on a purchase order form. Each blanket purchase

arrangement shall contain appropriate provisions relating to the following:

(4) Suppliers shall submit an invoice as required, usually once a month. The original of each delivery ticket shall accompany the invoice.

(5) The blanket purchase arrangement should specify the place(s) to which deliveries are to be made. (Usually the arrangement will provide for delivery to the requiring activity.) Places means geographic area such as street, quadrant of a city, major metropolitan area, city, state, etc., as specified within the BPA.

(6) The arrangement should state the discount terms which will apply to orders placed against the blanket purchase arrangement.

(7) Certificate of conformance-type shipments may be arranged (see § 5-3.653).

(b) *Requesting delivery orders.* Only officials authorized by a contracting officer and designated in the blanket purchase arrangement shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Prior to placing calls against the blanket purchase arrangement, each requirement shall be screened for availability from mandatory sources of supply. Necessary controls shall be maintained by the person placing call orders under the blanket purchase arrangement to ensure that any limitation stated therein is not exceeded. The blanket purchase arrangement identification, and requisition number, if any, should be specified each time a delivery is requested.

(c) *Authority citation and numbering of BPAs.* Each blanket purchase arrangement shall be numbered or otherwise identified and shall cite the negotiation authority as provided in § 5-3.203(a).

(d) *Delivery tickets.* When deliveries are made, the receiving activity will retain one copy of the related delivery ticket and return the remaining copies to the supplier, one copy of which is to be signed. Each delivery ticket must contain the following information: blanket purchase arrangement identification; requisition number, if any; the name of the person placing the call; an itemized listing of the materials furnished; and the quantity, price and extension of each item.

19. In § 5-3.606-50, paragraph (d) is revised to read as follows:

§ 5-3.606-50 **Advance establishment of supply sources by blanket purchase arrangements.**

(d) Generally for any single source BPA, Standard Form 18, Request for Quotations, shall be used for obtaining price information. The request for quotation should make it clear that a BPA will be issued to that offeror who offers the best terms to the Government for the entire requirement, at a stated level of quality, price and other factors considered. To obtain a common denominator for the evaluation of quotations, requirements must be expressed in terms of minimum acceptable quality (applicable specifications, brand names or equal, manufacturer catalogs, etc.). Single source BPAs shall be issued for an entire line of estimated requirements, based on best discounts from established contractors' catalogs and price lists, after assurance that the catalog items of the low quoters are comparable in quality to the items offered by other quoters. Delivery requirements should be stated within a range from immediately to not later than 10 calendar days after receipt of order. The BPA shall contain a provision that no single order placed thereunder shall exceed \$5,000, and that no order from another source shall be placed for any item covered by an established Government contract source except: (i) When the requirement is below the minimum order quantity stated in the contract and the established contractor is unwilling to accept such an order, or (ii) the requirement is urgent and the established contractor cannot meet the delivery requirement.

20. Section 5-3.652 is redesignated as § 5-3.606-52 and the heading is revised to read as follows:

§ 5-3.606-52 **Certified invoice procedure (supplies and services).**

PART 5-16—PROCUREMENT FORMS

The authority citation for 41 CFR Part 5-16 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

21. The Contents of Part 5-16 is amended by adding the following new entry:

Sec.
5-16.950-3471A GSA Form 3471A, Bid Abstract, (Continuation Sheet).

22. The Contents of Part 5-16 is amended by removing § 5-16.950-2097 as follows:

§§ 5-16.950-1467A and 5-16.950-3471 [Amended]

§ 5-16.950-2097 GSA Form 2097, Offer and Acceptance—Small Purchases. [Removed]

23. Sections 5-16.950-1467A, and 5-16.950-3471 are amended to illustrate the October 1982 edition of the forms and to illustrate the new form in § 5-16.950-3471A.

Note.—The forms mentioned above are filed with original document and will not appear in the CFR volume.

Dated: October 11, 1983.

Allan W. Beres,
Assistant Administrator for Acquisition Policy.

[FR Doc. 83-28561 Filed 11-7-83; 6:45 am]

BILLING CODE 6820-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 18

[Docket No. 20718; FCC 83-496]

Overall Revision of Part 18 Governing Industrial, Scientific and Medical Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule

SUMMARY: This document deletes the requirement to file FCC Form 724 for ultrasonic equipment and industrial heating equipment operated under Part 18. The use of this form is no longer considered necessary to investigate and correct interference problems.

EFFECTIVE DATE: December 7, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Science and Technology, (202) 653-6288.

List of Subjects

47 CFR Part 2

Radio

47 CFR Part 18

Reporting and recordkeeping requirements.

Second Report and Order (Re: FCC Form 724)

In the matter of overall revision of Part 18 governing Industrial, Scientific and Medical equipment; Docket 20718.

Adopted: October 27, 1983.

Released: October 31, 1983.

By the Commission.

1. The use of FCC Form 724—Registration of Industrial, Scientific and Medical Equipment—is mandated by Subpart D of Part 18 of the Commission's Rules. This requirement was added to Part 18 in 1961 by Docket 13511.¹ Section 18.101 requires industrial heating equipment to be certificated and Section 18.111 specifies that after April 30, 1961 the certificate shall be on FCC Form 724. Section 18.116 requires FCC Form 724 to be filed with the Commission.

2. In 1976, the Commission instituted a rule making to rewrite Part 18—ISM Equipment—in its entirety.² Among other things, we proposed to delete the requirement to use FCC Form 724 since we had found over the years that Form 724 was no longer necessary to carry out the Commission's obligation to investigate and correct interference situations arising from the operation of industrial heating equipment. No objections were received to this part of the proposal. Since we do not need this form, we see no reason to continue burdening the public with it while we consider the more complex issues raised in this proceeding.

3. We are hereby eliminating the requirement that members of the public file FCC Form 724, and we are also discontinuing this form. The rule amendments to achieve this objective are set out in the attached Appendix.

4. Accordingly, pursuant to the authority in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, it is ordered that effective December 7, 1983, Part 18 is amended as set out in the Appendix to this Order.

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix

PART 2—[AMENDED]

A. Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

1. Section 2.809(b) is revised to read as follows:

§ 2.809 Exception for ISM equipment.

(b) Sections 2.803 and 2.805 shall not apply to industrial heating equipment as defined in § 18.3(c) of this chapter which

generates less than 10 kW of RF energy: *Provided, however,* That the vendor of such equipment has notified the purchaser/lessee in writing whether the equipment as delivered will meet the technical standards in Part 18 of this chapter, or whether the equipment must be installed in a screened enclosure before it may be operated.

PART 18—[AMENDED]

B. Title 47 of the Code of Federal Regulations, Part 18, is amended as follows:

§ 18.83 [Amended]

2. Paragraph (c) of § 18.83 is removed.

3. Paragraph (c) of § 18.106 is revised to read as follows:

§ 18.106 Renewal of certificate.

(c) The renewal certificate shall be executed in accordance with § 18.116. The radiation measurements specified in § 18.116(b) shall be performed for renewal.

§§ 18.111, 18.112 and 18.113 [Removed]

4. Section 18.111, 18.112 and 18.113 are removed.

5. Section 18.115 is revised to read as follows:

§ 18.115 Compliance with installation instructions.

(a) Where the certification regarding radiation is based on measurements of a prototype, the equipment shall be installed in accordance with the instructions which the engineer performing the radiation measurements specified in § 18.109 has certified as adequate to ensure reasonable expectation of compliance with the radiation limits in § 18.102.

(b) The owner or lessee of the equipment in the case of a proprietorship, the partners in the case of a partnership, or an officer or authorized employee (such authorization shall be in written form) in the case of a corporation shall retain responsibility for ensuring that certified industrial heating equipment continues to comply with the regulations.

6. Section 18.116 is revised to read as follows:

§ 18.116 Certificate of compliance.

(a) The certificate required for industrial heating equipment shall be executed by an engineer skilled in making and interpreting field strength measurements. The Commission may require such engineer to provide proof of his/her qualifications.

(b) The certificate shall contain the following information:

(1) A report of the radiation measurements pursuant to § 18.109 including a description of the equipment, the address at which the equipment was measured, and the date that the measurements were performed. These measurements shall be signed by the certifying engineer. The name and address of the employer, if any, of the certifying engineer shall be shown.

(2) Additional equipment information including the normal range of operating frequency, a description of the function of the equipment, and the model number and serial number of the equipment.

(c) Except as noted in paragraph (d), the certification shall be based on an inspection of the equipment and measurements taken at the place of use after the industrial heating equipment has been assembled and is ready for operation.

(d) The above measurements and information need not be made or retained for equipment which has been prototype certificated except in those cases where recertification of the equipment is required. For an original certification or a recertification, the provisions of this section shall be performed and retained by the operator. With an original certification, the radiation measurements specified in paragraph (b) may be supplied by the equipment manufacturer, provided such measurements were performed on equipment installed in a similar manner as the equipment being certificated.

7. Section 18.117 is revised to read as follows:

§ 18.117 Copy of certificate with equipment.

(a) A copy of the data required for certification shall be retained by the operator and shall be attached to the equipment. Alternatively, the certification data may be placed at any location where it will be conveniently available for inspection by authorized representatives of the Commission, provided there is attached to the equipment a notice stating where the certification data is located.

(b) In the case of equipment which has been prototype certificated and has not been required to be recertificated, no information is required to be kept on file.

§ 18.118 [Removed]

8. Section 18.118 is removed.

9. Paragraph (d) § 18.119 is revised to read as follows:

¹ Docket 13511, In the Matter of Amendment of Part 18 of the FCC Rules, Report and Order, 26 FR 2187 (1961).

² Docket 20718, In the Matter of Overall Revision of Part 18 governing Industrial, Scientific and Medical Equipment, Notice of Proposed Rule Making, 69 FCC 2d 876 (1978).

§ 18.119 Elimination and investigation of harmful interference.

(d) If the equipment has not been certificated or if renewal of the certificate is required, a certificate covering the equipment shall be completed in accordance with the provisions of § 18.116.

10. Paragraphs (c) and (d) of § 18.120 are revised to read as follows:

§ 18.120 Interference to a radionavigation or safety service.

(c) If the results of the interference investigation demonstrate that the harmful interference has been eliminated, and if the field work involved in certification, when required, demonstrates that the equipment meets the requirements for certification, the operator may, with the permission of the Engineer in Charge of the district office, resume full operation for a period of 10 days pending preparation and submission of the final interference report required by § 18.122 and preparation of the certificate required §§ 18.101 and 18.116. Requests for permission to operate under such circumstances may be made and granted by telephone, but in that event the request and the grant shall be confirmed promptly in writing.

(d) Operation may be resumed on a regular basis after the harmful interference has been eliminated, the interference report has been filed, and the certificate, if required, has been completed.

11. Paragraphs (c) and (d) of § 18.121 are revised to read as follows:

§ 18.121 Interference to other radio services.

(c) If the results of the interference investigation demonstrate that the harmful interference has been eliminated, and if the field work involved in certification, if required, demonstrates that the equipment meets the requirements for certification, the operator may, with the permission of the Engineer in Charge of the district office, resume full operation for a period of 10 days pending preparation and submission of the final interference report required by § 18.122 and preparation of the certificate required by §§ 18.101 and 18.116. Requests for permission to operate under such circumstances may be made and granted by telephone, but in that event the request and the grant shall be confirmed promptly in writing.

(d) Operation may be resumed on a regular basis after the harmful

interference has been eliminated, the interference report has been filed, and the certificate, if required, has been completed.

12. Paragraph (a) of § 18.126 is revised and paragraph (b) is removed and reserved, to read as follows:

§ 18.126 Information to be filed for prototype certification.

(a) The information required in paragraphs (a) and (b) of § 18.116. The serial number of the equipment need not be reported for prototype certification.

(b) [Reserved]

[FR Doc. 83-30137 Filed 11-7-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-374; FCC 83-487]

Amendment Regarding Additional City Identification

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This action amends the rule concerning multiple-city identification by broadcast licensees. It eliminates the current application, review and approval process now applicable in this area and permits a broadcast licensee to mention in its official station identification any community that it selects without regard to the station's signal coverage of the additional community. Previously, a broadcaster was required to place a principal-city signal over any community which was included in its official identification. This action was taken because the current rule was found to serve no legitimate regulatory purpose and because it imposed unnecessary burdens on both broadcast licensees and the Commission.

EFFECTIVE DATE: December 8, 1983.

ADDRESS: Federal Communication Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.1201(b)(2) of the Commission's Rules—Additional City Identification; BC Docket No. 82-374; FCC 83-487.

Adopted: October 19, 1983.

Released: November 1, 1983.

By the Commission: Commissioner Quello absent.

Background

1. On July 1, 1982, we adopted a *Notice of Proposed Rule Making* in this proceeding proposing the alteration of our rule concerning multi-city identification by broadcasters.¹ Under § 73.1201(b)(2) of the Commission's Rules, a licensee must identify itself with its community of license. If it wishes to mention other communities in its official identification, it must request such authority from the Commission in an informal application. Such requests are routinely granted provided that the additional communities are located within the requesting station's principal-city signal contour. The Commission also has considered factors in addition to signal coverage, including "mutuality" (i.e., whether the opposing station would be eligible for additional city identification) and the viability of the requesting and opposing stations, in deciding additional city identification cases.

2. The *Notice* in this proceeding proposed two alternative changes in the substance and procedure for obtaining authority for multi-city identification. The first option was to retain the coverage requirement but to permit licensees to certify to the Commission that they meet the coverage standard. This would eliminate the application procedure and would permit the licensee to commence multi-city identification without further Commission action or review. Under this approach, signal coverage alone would govern eligibility and consideration of such non-technical factors as mutuality and viability would be eliminated. The second option was to eliminate both the application procedure and the coverage requirement, thus permitting licensees to identify by their community of license followed by any other community or communities that they selected, irrespective of their signal coverage of such additional communities. Comments were received with respect to both of these proposals. Other alternatives also were suggested by commenting parties.

Comment Summary

3. *Certification.* Comments supporting the certification option stress the speed, efficiency, and cost effectiveness of such a procedure. It is asserted that the current rule contains a specific guideline governing authorization of multi-city identification and that most multi-city

¹ FCC 82-305, released July 23, 1982. 47 FR 32957, published July 30, 1982.

applications are routinely granted. Thus, it is contended that the application procedure is completely unnecessary. Indeed, at least one commenter suggests that the Commission's approach in station identification matters has largely been one of certification already. Puerto Rico Broadcasting, Inc. (PRBI), however, recommends that the Commission utilize actual coverage, rather than predicted coverage, as the standard should the certification procedure be adopted. It contends that actual coverage has been utilized for this purpose in the past.² It also contends that the use of actual coverage would conserve Commission resources by eliminating most instances in which authorization for multi-city identification is sought and granted but is subsequently challenged on actual coverage grounds.³ Under PRBI's proposal, waivers could still be sought in cases where there is no actual encompassment, but where other factors would support multi-city identification authorization.

4. Those opposed to the certification proposal argue that the current application process is neither costly nor burdensome given that only about 100 such applications are filed each year and that most of these are routinely granted. Accordingly, it is asserted that any administrative economies that might result from elimination of the application process would be outweighed by the consequences of such action—the disregard of public interest considerations which in the past warranted denial of multi-city identification permission irrespective of coverage. In any case, Channel Nine of Orlando (Channel Nine) asserts that administrative convenience does not provide a basis for abandoning prior policy.⁴ Telemundo, Inc., argues that confusion to the public could result from a certification procedure. Specifically, it is alleged that the procedure could increase the likelihood of a station commencing multi-city identification and shortly thereafter changing its method of station identification. Such a change would be required where, for example, the Commission rescinds the certification based on new information

indicating a lack of requisite coverage of the added community.

5. *Elimination of the Coverage Requirement.* Several commenters express support for the second option—the elimination of the coverage requirement as well as any application or authorization procedure. These commenters express the view that the decision to implement multi-city identification is a business decision which should be made by the broadcasters who run the risks inherent in making such decisions. Both the existing rule and a certification procedure, it is asserted, unjustifiably interfere with the play of free market forces without providing any countervailing benefit to the public. This option would permit broadcasters to function more effectively by allowing them to respond to the demands and incentives of the marketplace and would eliminate unnecessary administrative procedures, thereby conserving Commission resources. Adequate protection against abuse exists, these commenters assert, given the Commission's policies requiring licensees to deal candidly and truthfully with the public and prohibiting the use of inaccurate, misleading or exaggerated coverage maps or audience claims. Furthermore, stations would continue to owe their primary service obligation to their community of license without regard to their mode of official station identification. Moreover, the argument continues, should a licensee utilize a method of identification that was deceptive or misleading it could face civil penalties. The National Radio Broadcasters Association (NRBA) argues that neither advertisers nor the public needs the Commission to protect them from false coverage claims. Advertisers do not purchase air time based upon a station's official identification announcement. Rather, they rely on professional specialized market surveys and audience ratings studies. The public, NRBA asserts, can test coverage claims by merely turning on the radio. In no case, it concludes, should the Commission be in the business of protecting advertisers who are well able to protect themselves with the use of ordinary diligence.

6. A number of commenters strongly oppose eliminating the current requirements. They contend that permitting stations to identify by any community (in addition to their community of license) would distort, not mirror, the marketplace because identification would not accurately reflect reality. The coverage requirement is said to act as a limiting factor so that

unreasonable city identification claims cannot be made and so that unnecessary confusion in the audience's mind as to the market area from which a given station originates can be minimized. Elimination of the coverage requirement is seen by the National Association of Broadcasters (NAB) as indicating a Commission movement away from the policy of encouraging local service. Channel Nine suggests that elimination of the coverage requirement would undermine public and advertiser reliance on the integrity of station identification claims. Channel Nine also believes that this option would constitute an abandonment of the Commission's longstanding policy against false and deceptive practices by licensees. Market forces will not prevent such practices, according to Telemundo, because stations will utilize any means "that may afford any shred of credibility" to their attempts "to enlarge upon their status or stature as competitors."

7. Commenters also question whether this option would result in any savings to the Commission or the public in general. Channel Nine argues that administrative savings would not result because the abandonment of the coverage requirement would likely generate numerous complaints and proceedings. By contrast, retention of the coverage requirement, which provides a known and rational basis on which to judge the reasonableness of multi-city identifications, would avoid such disputes. PRBI contends that there also would be no savings to the public because it is less costly to enforce the existing straightforward rule than it would be to pursue the substantial civil litigation that would result from adoption of the proposed "market" approach. Telemundo believes that the abandonment of the coverage requirement also would mislead the public and would result in audience guides, newspaper listings and rate and data service information becoming confused and inconsistent as the standard for multi-city identification and the meaning of such identification would no longer be certain. Finally, it is asserted that any change in the current rule is unnecessary because stations currently may identify with communities in their lesser coverage areas in station promotional announcements, so long as they give their official identification as required.

8. *Alternative Proposals.* A number of commenters submitted alternative proposals or made suggestions for modification of our own proposals. Telemundo, for instance, suggests that

² PRBI cites *Ponce Television Corp.*, 88 FCC 2d 1081 (1982), where the Commission withdrew multi-city identification authorization because terrain factors resulted in a large portion of the added community being shadowed. Predicted coverage has indicated that the entire community was encompassed by the applicant's city-grade contour.

³ These would be cases similar to *Ponce Television Corp.*, *supra*, in which actual coverage is not provided although it is predicted.

⁴ In support of its position, Channel Nine relies on *New Castle County Airport Commission v. C.A.B.*, 371 F. 2d 733 (D.C. Cir. 1966).

the Commission adopt a notification procedure instead of a certification procedure. Under this proposal, a licensee desiring to add a community to its official identification would notify all licensees and permittees with broadcast facilities licensed to communities within 15 miles of the city to be added. These licensees would have 30 days in which to file objections with the party making the notification. That party then would submit the notification and the responses to the Commission for approval or denial of multi-city identification authorization. If no objections were received in response to the notification, the licensee could commence multi-city identification 5 days after the 30 day objection period had passed. Thus, the Commission would be relieved of receiving and processing applications in the vast majority of cases that are uncontested.

9. A group of joint commenters proposed that the Commission retain the coverage requirement for radio but permit all television stations in a given market to identify with all other communities that comprise that market as defined by Arbitron's Area of Dominant Influence. According to the joint commenters, this approach would recognize that television is a wide area or regional type of service in which stations from different communities are typically perceived by advertisers, advertising agencies, other television stations and the public as serving a single market. It is argued that this makes the city-grade coverage requirement unnecessary for television.

10. Several commenters that generally support the certification option ask that it be supplemented by a post-certification review process through which pertinent objections to any certification could be presented and considered by the Commission on a case-by-case basis. Examples of such pertinent objections, in these commenters' view, would be a subsequent showing that definitively disputes "the essential facts" on which the certification was based, a showing of lack of actual or predicted coverage, extrinsic evidence that the certification is part of a de facto reallocation attempt, or a demonstration that error or misrepresentation was involved. Absent such review, NAB sees the certification option as another "step in an unlawful FCC trend toward neglecting the allocations and service needs of small communities and giving less concern to the statutory mandate of Section 307(b) of the Communications Act." Specifically, NAB fears that by eliminating consideration of factors

other than signal coverage, the Commission will be opening the door to de facto reallocation of facilities contrary to Section 307(b) and longstanding Commission policy. Finally, a number of commenters suggest that, regardless of the coverage standard adopted in conjunction with a certification process, a waiver procedure should be made available for stations that do not meet the required coverage criteria but whose unique market or coverage circumstances might nevertheless warrant authorization for multi-city identification.

Discussion

11. *Elimination of the Coverage Requirement.* Having reviewed the record in this proceeding, we are convinced that the signal coverage requirement imposed by § 73.1201(b)(2) of the Rules in connection with additional city identification by broadcasters is unwarranted. Accordingly, we are amending this provision to permit a broadcaster to include in its official station identification the name of any community or communities that it selects, irrespective of the level of signal coverage provided to such communities. Neither application nor notice to the Commission in connection with changes in a station's mode of identification pursuant to this amendment will be required.

12. Our decision to eliminate the coverage requirement is motivated by several considerations. First, we perceive no legitimate regulatory need for the restriction. To the extent that the current rule is intended to protect advertisers from possibly being misled as to the coverage of a station, it unnecessarily and inappropriately involves the Commission in the economic relationship between a broadcaster and its advertisers. As we recently stated in our *Policy Statement and Order* ("Elimination of Unnecessary Broadcast Regulation"),² advertisers are neither required to nor likely to rely on station claims in determining coverage. Rather, they typically utilize readily available and sophisticated market survey data to ascertain the extent and demographic composition of a given station's audience. In any event, we found, advertisers have recourse to private legal remedies should they be defrauded by false coverage claims or representations. These considerations led us to eliminate our former policies concerning misleading coverage claims and distortion of audience ratings by broadcast licensees. It is even less

likely, in our view, that advertisers will be misled by a station's official identification, regardless of what communities a licensee might choose to include in its announcement.

13. We also do not believe that eliminating the coverage requirement will pose any appreciable risk of harm to the public. In this regard, we note that a station will still be required to name its community of license first among the communities listed in its official station identification, thus providing a means of determining the station's location. Furthermore, contrary to some commenters' speculative contention that unreasonable station identifications will occur if the coverage requirement is deleted, we think that market forces and common sense will prevent stations from identifying with communities which they do not serve or have any connection with. In any event, even were a licensee to identify with a community which it does not serve, we can see no serious harm that would warrant Commission intervention. Those listeners or viewers routinely receiving the station are likely to be familiar with its general location, and those not receiving the signal cannot be misled by such an identification.³

14. We also disagree with NAB's contention that elimination of the coverage requirement will result in a movement away from the policy of encouraging local service. As we have stated in past cases and in the *Notice*, the inclusion of additional communities in a station's official identification does not alter the station's location or its obligation to provide satisfactory service to its community of license. See, e.g., *WTSP-TV, Inc.*, 48 RR 2d 1289 (1981). Consequently, if a station fails to meet its primary service obligation to its community of license, the matter would be considered in connection with the station's application for renewal of its license. Neither the substance nor procedure of this approach is affected by the changes we are adopting here. Additionally, NAB's argument that elimination of the coverage requirement will open the door to de facto

²To the extent, of course, that a licensee's use of inaccurate additional city identification results in judicial or agency findings of a violation of law, we will continue to consider such findings. See *Violation of Laws of USA by Station Applicants*, 42 FCC 2d 399 (1951). However, the relevance of these situations to licensee character evaluation, and indeed the more general question of whether the Commission should continue to consider even adverse findings where, as here, the activities are primarily business-related rather than broadcast-related, will be resolved in the pending proceedings in Gen. Docket No. 81-500, *Policy Regarding Character Qualifications in Broadcast Licensing*, 87 FCC 2d 836, 648 (1981).

³FCC 83-399, released August 2, 1983.

reallocation of facilities is unpersuasive in view of our recent action in BC Docket No. 82-320.⁷ In that proceeding, we abolished the de facto reallocation policy, concluding that reliance on our various licensing rules "would achieve the intended objectives of the policy while avoiding the unintended and unwanted results which the policy had engendered. *A fortiori*, retention of our existing identification rule, itself encumbered by unwanted effects, cannot be justified on the grounds that it is essential to prevent de facto reallocations.

15. In contrast to our conclusion that no substantial public interest purpose is served by retaining the coverage requirement, we find that adverse effects may result from its retention. Specifically, we are concerned that the current rule unnecessarily interferes with market forces, possibly skewing competitive relationships to the detriment of the public. Many stations, for example, provide service to communities beyond their principal-city coverage contour and often generate significant advertising revenues in these areas. Yet, under current restraints, these stations cannot reflect this marketplace relationship in their official station identification.⁸ To the extent that this situation artificially protects some stations from competition, it removes what may be a healthy competitive incentive for the protected station to improve its service to the public.⁹

⁷ Report and Order in BC Docket No. 82-320, FCC 83-81 (released March 14, 1983), 53 FR 2d 681, 46 FR 12094, published March 23, 1983.

⁸ These rules require a licensee to provide city-grade service to its community of license, to locate and maintain its main studio within its community of license and to provide programming responsive to the needs of its community of license.

⁹ *Thomas Radio Co.*, 51 FR 2d 1151 (1982), *aff'd* *Thomas Radio Co. v. FCC*, Case No. 82-1826 (D.C. Cir., decided August 30, 1983), exemplifies this untoward result. In that case, station WOAY(AM), Oak Hill, West Virginia, requested and was denied permission to identify as Oak Hill-Beckley, West Virginia, because the station failed to place a city-grade signal over all of Beckley. In particular, the station did not place a 25 mV/m signal over the business areas of Beckley, although it placed the requisite 5mV/m signal over the residential areas of the community and provided at least that level of service to the business district as well. Moreover, WOAY apparently was deriving about half of its advertising revenues from Beckley merchants. On appeal, the court affirmed our decision to deny WOAY's request, basing its affirmation on the limited scope of judicial review permitted in such cases. However, the court also questioned the soundness of the Commission's reasoning, stating that "the FCC's order . . . demonstrates very little practicality, and we are, therefore, encouraged by the agency's assurance to us that it is undertaking a reformulation of its policies on dual-city identification." Slip op. at 8.

¹⁰ We acknowledge that the competitive impact of a particular mode of station identification is uncertain and may well be rather small in terms of

16. Further, the existing rule imposes burdens on the Commission and its licensees, both in terms of the application process now specified and in terms of the substantial efforts and resources consumed in contested cases in this area.¹¹ Given our finding that no significant public interest purpose underlies the current requirement, these burdens are simply not justified.

17. We are also eliminating consideration of several non-technical factors that previously could have precluded multiple city identification. A Concerns such as "mutuality" and the viability of the requesting station are plainly moot in view of our decision to eliminate the coverage requirement and to permit stations to identify with any additional communities which they select. Furthermore, we find that entertaining objections to additional city identification based upon the viability of the opposing station, as in *Sudbrink Broadcasting, Inc. of Florida v. F.C.C.*, 509 F. 2d 418, (D.C. Cir. 1974), is no longer advisable. As we noted earlier, we see no legitimate reason to expend Commission resources to protect stations from the competition caused by additional stations identifying with a particular community. In most cases, these stations will be serving the community in question and the added competition may well inure to the benefit of the public.

18. *Certification.* Our decision to eliminate the coverage requirement altogether clearly renders consideration of the certification option raised in the Notice, and the variants of this approach suggested in the comments, unnecessary. Moreover, we do not believe that any form of notification to or prior review by the Commission should be required in connection with stations commencing or terminating multiple city identification. We discern no regulatory need for such procedures and conclude, therefore, that the burdens which they would impose on the Commission and its licensees are unwarranted.

19. *Additional Matters.* Our action permitting stations to identify with any community or communities that they wish vitiates the purpose of § 73.1201(b)(3) of the Rules. That section provides that a licensee shall not in its identification announcements, promotional announcements or in any

generating advertiser or audience support. This very uncertainty, however, is at once what disturbs us about intervening regulatorily in this area and reinforces our conclusion that the marketplace mechanism is best suited to deal with the matter.

¹¹ See, e.g., *Thomas Radio Co.*, *supra*, n.8, slip op. at 8.

other broadcast matter, attempt to lead its audience into believing that the station has been authorized to identify officially with communities other than those approved by the Commission pursuant to § 73.1201(b) (1) and (2) of the Rules. Because such approval is no longer required, this constraint is now academic. Accordingly, we are deleting § 73.1201(b)(3) of the rules in its entirety. We wish to emphasize, however, that this action is ministerial in nature and in no way implies our approval of station identifications designed to confuse the public as to station's community of license. On the contrary, § 73.1201(b)(2) continues to require that a station's community of license be listed first among the communities named in its official station identification.

20. In sum, we believe that our action eliminating the coverage requirement in connection with multiple city identification by broadcasters will relieve appreciable burdens on both licensees and the Commission. Moreover, this action will also promote a more competitive broadcast environment, thereby ultimately benefitting the industry and the public.

Final Regulatory Flexibility Analysis

I. Need for and Purpose of the Rule

21. The purpose of the instant amendment of § 73.1201(b) of the Commission's Rules is to eliminate unnecessary substantive and procedural requirements that currently must be satisfied before broadcast licensees may include additional communities in their official station identifications. Specifically, this amendment eliminates the requirement that a station place a city-grade signal over any additional communities with which it wishes to identify. Such a restriction was found to serve no legitimate regulatory purpose, yet it often prevented stations from identifying with communities which the stations served and from which the stations derived appreciable advertising revenues. Furthermore, the subject amendment deletes the current application, review and approval process which imposed unwarranted burdens on broadcast licensees and the Commission's staff. Finally, the amended rule eliminates consideration of various non-technical factors that previously could have precluded multiple-city identification.

II. Flexibility Issues Raised in the Comments

22. The most significant flexibility related issue raised in the comments was support for the option adopted in

this *Report and Order*, which eliminates both the coverage requirement and the existing application, review and approval process. Some commenters felt, however, that the coverage rule should be retained, while the application procedure should be replaced by a less burdensome alternative, such as the certification option proposed in the *Notice*.

III. Significant Alternatives Considered, But Not Adopted

23. Two significant alternatives were considered. The first was the alternative mentioned immediately above, under which a station could include additional communities in its official identification upon certifying that its principal-city signal contour encompassed these communities. The second alternative, which was first proposed in the comments, was to adopt a notification procedure as fully described in paragraph 8, *supra*. These alternatives were both rejected because they were premised upon retention of a coverage requirement that we found to serve no viable regulatory purpose.

24. Accordingly, it is ordered, that § 73.1201(b) of the Commission's Rules, 47 CFR 73.1201(b), is amended, as set forth in the attached Appendix, effective December 8, 1983.

25. Authority for this action is contained in Sections 4(j), 303(g) and 303(r) of the Communications Act of 1934, as amended.

26. For further information on this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix

PART 73—[AMENDED]:

47 CFR 73.1201 is amended by revising paragraph (b)(2), and removing paragraphs (b)(2)(i), (b)(3) and the Note preceding paragraph (c), to read as follows:

§ 73.1201 Station identification.

(b) * * *

(1) * * *

(2) A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.

Appendix B

List of Commenters

Channel Nine of Orlando

Telemundo, Inc.
WHP, Inc.
Puerto Rico Broadcasting, Inc.
Southern Broadcasting Corp.
Metro Communications South, Inc.
National Radio Broadcasters Association
Carl Como/Ronette Communications Corp.
National Association of Broadcasters
Joint Comments of:
Buford Television, Inc.
General Electric Broadcasting Company, Inc.
John H. Phipps Broadcasting Stations, Inc.
Lake Huron Broadcasting Corp.
WKRG-TV, Inc.
Ziff-Davis Broadcasting Co., division of Ziff-Davis Publishing Co.

[FR Doc. 83-30225 Filed 11-7-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. 83-02; Notice 2]

Certification Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Final rule.

SUMMARY: This notice amends NHTSA's safety certification regulations to permit the use of a simplified certification label by final-stage manufacturers of trucks manufactured in two or more stages. This action is being taken in response to a petition by the National Truck Equipment Association (NTEA), and is intended to reduce the administrative burdens imposed of final-stage manufacturers by the certification requirements.

DATE: This amendment is effective on November 8, 1983.

ADDRESS: Any petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Roger Fairchild, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: Section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403)

requires each motor vehicle manufacturer to affix to each vehicle it produces a label certifying that the vehicle complies with all applicable Federal motor vehicle safety standards. NHTSA has promulgated regulations specifying the content and location of the required label. See 49 CFR Part 567.

In the case of motor vehicles that are manufactured in two or more stages, chassis-cab manufacturers and intermediate manufacturers who work with chassis cabs are also required to attach labels to their vehicles indicating the extent to which each has assisted in assuring the compliance of the vehicles with the safety standards. The requirements for labeling for the chassis-cab and intermediate manufacturers arose from the court decision in *Rex Chainbelt v. Brinegar*, 511 F.2d 1215 (7th Cir. 1975), in which the court indicated that all manufacturers involved in the manufacturing process should certify compliance to the degree their work affects the vehicle. Prior to that decision, only the final-stage manufacturer certified the compliance of a multi-stage vehicle.

Part 567 requires chassis-cab, intermediate, and final-stage manufacturers to list those standards for which compliance is being certified on each vehicle's certification label. Final-stage manufacturers can avoid this time-consuming listing of standards by electing to use an abbreviated certification statement that simply indicates that their vehicles comply with all applicable motor vehicle safety standards. However, few final-stage manufacturers make this statement, because they fear potential product liability from making such a broad representation on the certification label. They fear that the statement could be construed as an assumption of responsibility for manufacturing steps conducted entirely by other companies.

On August 17, 1982, NTEA petitioned the agency to amend the labeling requirements for final-stage manufacturers to further simplify the label. NTEA pointed out that in most cases the final-stage manufacturer does not affect compliance with the standards that have been previously certified by the chassis-cab or intermediate vehicle manufacturer. Also, in most cases, they complete the vehicle in accordance with the instructions in the incomplete vehicle document supplied by the previous manufacturer. In these cases, the NTEA argued, the label could be generalized in such a manner that reference to specific standards could be completely deleted.

with the final-stage manufacturer only certifying compliance with standards other than those certified by prior manufacturers. This would permit the development of a form label that would not require the time-consuming addition of significant amounts of specialized information by the final-stage manufacturer. This could reduce the burden of certifying for these manufacturers.

The NTEA recommended also that use of the existing, more complex label be retained as an option that can be used by any final-stage manufacturer. Under NTEA recommendations, the detailed label would be used by those final-stage manufacturers who do not follow the instructions in the incomplete vehicle documents or who affect the compliance of standards that were previously certified by the chassis-cab or intermediate vehicle manufacturers.

On February 13, 1983, NHTSA published a notice granting the NTEA petition and proposing to amend the certification regulations in accordance with NTEA's request. See 48 FR 6565. Based on a review of the comments received concerning that notice and the agency's further consideration of the NTEA petition, the agency is adopting the proposed amendments without change.

Only two commenters recommended changes in the agency's proposal, one opposing the amendment and the other supporting it but suggesting that it be expanded. The National LP-Gas Association opposed the amendment on the basis that requiring final-stage manufacturers to list the standards for which they are certifying compliance assures that those manufacturers have at least some familiarity with those standards. They argue that for manufacturers who are familiar with the standards, the more detailed certification statement imposes no significant burden. The NLPGA feels that the proposed amendment will therefore only aid those final-stage manufacturers who are not concerned about compliance with safety standards.

The agency recognizes that the NLPGA argument has some merit. However, even without this amendment, final-stage manufacturers could certify compliance with all standards without listing the standards by number, by using the abbreviated label. This amendment only clarifies the existing provision by allowing a statement that the final-stage manufacturer is only certifying compliance with standards other than those certified by the chassis-cab manufacturer or the intermediate manufacturer. The agency believes that this clarification is implicit in the

existing abbreviated certification option, in any case. Further, the listing of standards by number does not by itself assure any significant degree of familiarity with the standards.

Motor Truck Distributors, Inc., recommended a further simplification of the certification requirements by permitting final-stage manufacturers to eliminate gross vehicle weight rating and gross axle weight rating information from their certification labels if the work they perform does not alter the existing ratings of the chassis manufacturer. However, the current regulations do not require chassis cab manufacturers to list this weight rating information on their certification labels. Thus, adopting the MTD recommendation could result in situations in which those ratings would not appear anywhere on the vehicle. If the agency were to amend its requirements for chassis-cab manufacturers to specify that those manufacturers must list the weight rating information on their certification labels, conflicting rating values would appear on vehicles whose ratings were modified by either intermediate or final-stage manufacturers. These differing weight ratings could cause confusion for truck operators. Therefore, the agency is not adopting this recommendation.

The agency has determined there is good cause to make this amendment effective upon publication since it "relieves a restriction" within the meaning of 5 U.S.C. 553(d). Manufacturers may continue to use their existing labels or choose to change to the new system. Accordingly, no adverse economic consequences will result from an immediate effective date.

Executive Order 12291

The agency has evaluated the economic and other effects of this amendment and has determined that it is not major as defined by Executive Order 12291 nor significant as defined by the Department of Transportation's regulatory policies and procedures. The amendment simply allows a shortened certification technique for final-stage manufacturers, but permits them to continue to certify in the same manner that they certify at present if they choose. The only economic result of this amendment might be a slight reduction in the cost of certification for those entities that choose the new certification format. Because the economic and other impacts of this rule are so minimal, a full regulatory evaluation is not being prepared.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has

evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

While many of the final-stage manufacturers that will be affected by this amendment are considered small entities as defined by the Regulatory Flexibility Act, the effect on them, if any, would be negligible. The amendment would not impose any additional costs and might in fact slightly reduce costs for them. Most important, the amendment will potentially reduce confusion and complexity in the certification of their vehicles. Since the cost effects on manufacturers are minimal, the effects on vehicle prices, and thus on small organizations and governmental units that might purchase new multi-stage vehicles, are also negligible.

National Environmental Policy Act

The agency has also analyzed this amendment for the purposes of the National Environmental Policy Act. The agency has determined that the amendments to Part 567 will not have any significant effect on the quality of the human environment.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Reporting requirements.

PART 567—[AMENDED]

In accordance with the foregoing, 49 CFR 567.5(c)(7) is revised to read as follows:

§ 567.5 Requirements for manufacturers of vehicles manufactured in two or more stages.

(c) * * *

(7) One of the following statements as appropriate. Statements (i), (ii), and (iii) are alternative certification statements. Statement (i) may be used by manufacturers meeting the requirements described in the instruction portion of that paragraph. Statements (ii) and (iii) may be used by any final-stage manufacturer.

(i) "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standards, which have been previously fully certified by the incomplete vehicle manufacturer or intermediate vehicle manufacturer, has not been affected by final-stage manufacture. The vehicle has been completed in accordance with the prior manufacturer's instructions, where applicable. This vehicle conforms to all

other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The preceding statement shall be used only in cases in which the final-stage manufacturer has: (A) Not affected conformity to standards compliance with which has been fully certified by a chassis-cab manufacturer pursuant to paragraph (a)(1) of this section or by an intermediate manufacturer pursuant to paragraphs (b)(1)(i) or (b)(1)(ii) of this section, and (B) has completed the vehicle in accordance with the prior manufacturer's instructions in regard to standards listed, as appropriate, in a chassis-cab manufacturer's conditional statement under paragraph (a)(2) of this section or in an intermediate manufacturer's conditional statement under paragraph (b)(2) of this section. The date shown in the third sentence of the statement shall be not earlier than the manufacturing date of the incomplete vehicle, and not later than the date of completion of final-stage manufacture.

(ii) "Conformity of the chassis-cab to Federal Motor Vehicle Safety Standards Nos. _____ has not been affected by final stage manufacture. With respect to Standards Nos. _____, the vehicle has been completed in accordance with the prior manufacturer's instructions. This vehicle conforms to all other applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The first sentence of the preceding statement shall be completed by inserting the numbers of all or less than all of the standards, and only those standards, respecting which the latest prior certification statement was made by a chassis-cab manufacturer pursuant to paragraph (a)(1) of this section or by an intermediate manufacturer pursuant to paragraphs (b)(1)(i) or (b)(1)(ii) of this section. The second sentence of the statement shall be completed by inserting the numbers of all or less than all of the standards and only those standards, respecting which the latest prior certification statement was a chassis-cab manufacturer's conditional statement under paragraph (a)(2) of this section or an intermediate manufacturer's conditional statement under paragraph (b)(2) of this section. The date shown in the third sentence of the statement shall be not earlier than the manufacturing date of the incomplete vehicle, and not later than the date of completion of final-stage manufacture.

(iii) "This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards in effect in (month, year)."

The date shown shall be not earlier than the manufacturing date of the incomplete vehicle and not later than the date of completion of final-stage manufacture.

Secs. 103, 108, 114, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1403, 1407); delegations of authority at 49 CFR 1.50 and 501.7)

Issued on November 2, 1983.

Diane K. Steed,

Deputy Administrator.

[FR Doc. 83-30138 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 509

[Docket No. 83-17; Notice 1]

OMB Control Number Display for Information Collection Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Technical amendment.

SUMMARY: The Office of Management and Budget (OMB) has promulgated a regulation requiring that all agencies display the OMB control number for all regulations which contain information collection requirements, by publishing the control number in the Federal Register. This notice establishes a new part in Title 49 of the Code of Federal Regulations, which displays the OMB control number for the information collection requirements contained in current NHTSA regulations.

EFFECTIVE DATE: November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590; (202-426-2992).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 3516 of the Act authorizes the Director, Office of Management and Budget (OMB) to "promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." OMB used this authority and recently promulgated a new regulation, 5 CFR Part 1320.5 CFR 1320.7(f)(2) and 1320.14(e) require that agencies display the control number assigned by OMB, after OMB approves collections of information contained in agency rules. Accordingly, NHTSA is publishing the following table, showing the sections of Title 49, Code of Federal Regulations,

which contain an information collection requirement and showing the OMB control number assigned to each information collection requirement.

Publication of this table as a new part of Title 49, Code of Federal Regulations, simply meets the agency's obligation under 5 CFR Part 1320. It imposes no obligations or responsibilities on any party, nor does it alter any existing obligations. Accordingly, the NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and this table is effective as soon as this notice is published.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This rule does not affect any existing duties or obligations under agency regulations, and will have no cost impacts. Therefore, a full regulatory evaluation has not been prepared.

For the same reasons, NHTSA has determined that this rule will not significantly affect the human environment, after considering the environmental implications in accordance with the National Environmental Policy Act of 1969. Likewise, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities, after making the evaluation required by the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 509

Reporting and recordkeeping requirements.

In consideration of the foregoing:

Title 49, Code of Federal Regulations, is amended by adding a new Part 509 to read as follows:

PART 509—OMB CONTROL NUMBERS FOR INFORMATION COLLECTION REQUIREMENTS

Sec.
509.1 Purpose.
509.2 Display.

Authority: Sec. 2, Pub. L. 96-511, 94 Stat. 2819 (44 U.S.C. 3507).

§ 509.1 Purpose.

This part collects and displays the control numbers assigned to information collection requirements of NHTSA by the Office of Management and Budget (OMB). NHTSA intends that this part comply with the requirements of 44 U.S.C. 3507(f), which mandates that agencies display a current control number assigned by the Director of the

OMB for each agency information collection requirement.

§ 509.2 Display.

49 CFR part or section where identified and described	Current OMB control number
Part 512	2127-0025
Part 537	2127-0019
Section 551.45	2127-0040
Part 552	2127-0046
Part 556	2127-0045
Part 557	2127-0039
Part 566	2127-0043
Section 571.106	2127-0052
Section 571.205	2127-0038
Part 565	2127-0051
Part 573	2127-0004
Part 574	2127-0050
Part 575	2127-0049
Part 576	2127-0042
Part 580	2127-0047

Issued on November 2, 1983.

Diane K. Steed,

Administrator-Designate.

[FR Doc. 83-30161 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[No. Ex Parte No. 230 (Sub-No. 5A)]

Petition to Exempt Rail Movement of New Trailers and Containers From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of interim rules and request for comments; temporary exemption.

SUMMARY: Norfolk and Western Railway Company and Southern Railway Company seek an exemption from regulation for new empty trailers and containers moving in rail service, which have similar transportation, economic, and regulatory aspects to empty trailers and containers being transported incidental to trailer on flat car/container on flat car (TOFC/COFC) service. Such latter movement is now exempted under 49 CFR 1039.13 and 1090.1. Based on congressional policy and the merits of the petition, a new interim section 49 CFR 1039.14 exempting new empty trailers and containers is added, with a temporary exemption granted pending a final decision.

DATES: Comments (an original and 10 copies) are due on December 8, 1983. The temporary exemption is effective on November 8, 1983.

ADDRESS: Comments referring to Ex Parte No. 230 (Sub-No. 5A) should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

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 Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call 275-7428.

The interim rule is set forth in the appendix.

This action does not appear to have any significant effect on the quality of the human environment or the conservation of energy resources,

because it will permit these new empty trailers and containers to be shipped by the most direct and cost-efficient method.

We certify that the interim action will not have a significant adverse impact on a substantial number of small entities, since the proposal will result in a reduction of, and not an addition to, regulatory requirements.

Authority: 49 U.S.C. 10321(a), 10505, and 10762 and 5 U.S.C. 553.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, and Railroads.

Decided: October 28, 1983.

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

Agatha L. Mergenovich,
Secretary.

PART 1039—[AMENDED]

Appendix

Chapter X Title 49 of the Code of Federal Regulations is proposed to be amended by adding § 1039.16:

§ 1039.16 Exemption of new highway trailers and containers.

The rail transportation of new highway trailers or containers is exempt from the provisions of 49 U.S.C. Subtitle IV; except that carriers must continue to comply with Commission accounting and reporting requirements. This exemption shall remain in effect unless modified or revoked by subsequent order of this Commission.

[FR Doc. 83-30166 Filed 11-7-83; 6:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 48, No. 217

Tuesday, November 8, 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

Farmers Home Administration

7 CFR Parts 1910, 1924, 1930, 1941, and 1945

Implementation of Coordinated Financial Statements

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to replace its presently used forms (the Farm and Home Plan) which gather financial and production data with a more systematic and better organized set of coordinated financial statements (CFS). The agricultural industry is a highly competitive business which requires an ever-increasing amount of capital outlay. More sophisticated analysis is imperative in making sound financial management decisions and in determining the relative financial positions of FmHA borrowers. The CFS, which is in line with generally accepted accounting principles, conveys the kind of information necessary to make a sound analysis. The true and complete financial position and projected budgets of an applicant or borrower are not readily apparent with FmHA's present forms. The implementation of the CFS will amend FmHA regulations pertaining to receiving and processing loan applications and management guidance for Farmer Programs loan applicants and borrowers. The intended effect of this change is to help FmHA borrowers to develop an understanding and an awareness of the importance of sound financial and production analysis and to furnish FmHA employees and borrowers with the data necessary to make realistic and sound financial and production decisions.

DATES: Written comments must be received on or before January 9, 1983.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives

Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The OMB has approved the collection of information requirements contained in this proposed rulemaking and has assigned the OMB number 0575-0061. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Michael L. Chiavetta, Agricultural Management Specialist, Emergency Division, Farmers Home Administration, USDA, Room 6853, South Agriculture Building, 14th and Independence Avenue, SW, Washington, D.C. 20205, telephone (202) 382-1658.

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

This proposed action has been determined "nonmajor" since the annual effect on the economy is less than \$100 million and there will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not directly affect any FmHA programs or projects that are subject to intergovernmental consultation requirements of Executive Order 12372.

This proposed change affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404 Emergency Loans.
- 10.406 Farm Operating Loans.
- 10.407 Farm Ownership Loans.
- 10.410 Low to Moderate Income Housing Loans.
- 10.413 Recreation Facility Loans.

10.416 Soil and Water Loans.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart C, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Alternatives and Effects

1. Continue Using Present Forms

With the forms presently being used by FmHA, the true and complete financial position of an applicant or borrower is not readily apparent. This shortcoming hinders in-depth financial analysis, and the applicant's and/or borrower's progress and ability to develop a good understanding of the business from a financial viewpoint. FmHA's ability to make sound loan decisions and to give sound management and financial advice is also severely handicapped. In addition, other agricultural lenders find it difficult to interpret FmHA's present forms, which hinders their ability to determine whether or not to participate with or refinance existing FmHA loan accounts. If lenders cannot determine the precise financial position of an operator, or do not understand the projected annual income and expense records presented to them, they are more likely to deny financing to that operator than if a complete coordinated set of records were presented for their review. The cost of the Government will be in the form of delinquencies, debt settlements, charge-offs, and a lack of participating credit from other lending institutions.

2. Implementation of Coordinated Financial Statement (CFS) Forms

Through involvement in completing and interpreting the CFS, borrowers will develop a better understanding of their business from a financial viewpoint. This understanding and knowledge will enable borrowers and lenders to more easily communicate and mutually agree on management and financial decisions. The CFS will permit borrowers, FmHA, and other lenders to conduct an in-depth financial analysis which will include an evaluation of liquidity, solvency,

profitability, and financial efficiency. This will provide a substantially improved loan analysis, which in turn will result in realistic and sound FmHA loan programs. The proposed CFS will also provide more financial detail, which will provide documentation on which decisions and recommendations can be made. In addition, other lenders are expected to be more receptive to financial participation since FmHA employees, FmHA borrowers, and lenders will all be using common financial terms. The Agency expects the following benefits: Time savings, as borrowers begin bringing in the CFS already completed; lower delinquencies since past performance and future projection data will be available for consideration when scheduling or rescheduling loan payments; sounder loans since the CFS will furnish increase information for analysis; and improved achievement of one of the agency's main objectives which is to aid borrowers, through managerial and credit counseling, to become credit-worthy applicants in the commercial lending field. Because of these benefits, alternative 2 was selected. In addition, the specific CFS which are being proposed have been selected for these basic reasons: *First*, they are thorough, complete and adaptable to FmHA's needs; *Second*, they can be prepared from whatever type of accounting system the applicant or borrower is presently using for income tax purposes; and *Third*, an accompanying manual is available which explains the various financial statements and provides guidance for their completion.

The CFS are very comprehensive. Undoubtedly, there will be FmHA applicants and/or borrowers who will be unable to complete the forms without receiving some assistance. It may be necessary for those applicants and/or borrowers who are unable to complete the CFS with minimal assistance, to employ an individual, firm, or company to assist them in the preparation of the required forms. Services providing assistance of this nature may charge a fee; however, it is imperative that the responsibility to complete the CFS and to maintain production and financial records be placed on the applicant/borrower. This is necessary, because the understanding and knowledge of the financial aspect of an operation cannot be obtained by a borrower without direct involvement in completing and interpreting the CFS. The expense incurred, if any, would be quite minimal compared to the total capital outlay needed to finance an operation of today and consideration should be given to the

knowledge gained by the borrower. FmHA will continue to provide guidance and assistance, as in the past, to those applicants/borrowers needing minimal assistance; however, FmHA will not complete the CFS forms in their entirety for applicant/borrowers. In addition, FmHA can advance loan funds to pay costs incurred if the total cost is reasonable for the type of service rendered and if other funds are not available to pay the cost of the service.

The implementation of CFS to replace FmHA's present financial budget form, "Farm and Home Plan," will necessitate amendments to several Part of Chapter XVIII, Title 7, Code of Federal Regulations. These amendments will consist of conforming changes and cross references in numerous FmHA loan making and loan servicing regulations since financial data and farm budgets are relied on in several FmHA decision making processes. All FmHA regulations that refer to Form FmHA 431-2, "Farm and Home Plan," will be amended to reference farm budgets. These changes will be addressed in the final rule publication, but are not included in this proposed rule since these changes are only administrative in nature, conforming these regulations to the changes subjected to the commenting process by this document.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination Sex discrimination.

7 CFR Part 1930

Agriculture, Construction and repair, Loan programs—Agriculture

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7 of the Code of Federal Regulations as follows:

PART 1910—GENERAL

Subpart A—Receiving and Processing Applications

1. Section 1910.3 is amended by removing paragraph (b), by redesignating paragraphs (c) through (k) as paragraphs (b) through (j) respectively, and by revising paragraph (a)(2) to read as follows:

§ 1910.3 Receiving applications.

(a) * * *

(2) All other applicants regardless of whether they are individuals or farming corporations, cooperatives or partnerships, including applicants who derive a major portion of their income from farming will complete the following:

(i) *Initial requests.* Requests by those not currently indebted to FmHA will be processed as following:

(A) Form FmHA 1910-1 will be used by all applicants of this group. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. In addition to Form FmHA 1910-1 and when required by § 1910.3(a)(4), Form FmHA 410-9, "Statement Required by the Privacy Act," all Farmer Program loan applicants must submit a completed "application package" which includes portions of the "Coordinated Financial Statements," (CFS) as outlined in paragraphs (a)(2) (i) through (iii) of this section. The CFS consist of Form FmHA 1930-1, "Balance Sheet," Form FmHA 1930-2, "Cash Flow Statement," and when appropriate Form FmHA 1930-3, "Income Statement" and Form FmHA 1930-4, "Statement of Change in Financial Position," or Form FmHA 431-2, "Farm and Home Plan." If an applicant is using financial statements that furnish the same data in a format similar to the CFS, the applicant may substitute those statements for the CFS. Applicants requesting FmHA assistance will be required to use the CFS or similar financial statements in lieu of Form FmHA 431-2 as provided in § 1910.3(2) (ii)(C) and (iii). Whenever possible, preference will be given to the use of CFS forms. For Emergency (EM) loans, it is also necessary for the applicant to complete Form FmHA 1945-22, "Certification of Disaster Losses."

(1) It is the sole responsibility of Farmer Program loan applicants to submit to FmHA completed Forms FmHA 1930-1 and 1930-2, 431-2 or other similar financial statements. Applicants need not complete Forms FmHA 1930-3 and 1930-4 or similar financial statements until the year end analysis.

(2) Each Farmer Program loan applicant must make a sincere attempt to complete the appropriate forms of the CFS or other acceptable financial statements and other forms of the application package. Once the application package is complete, or in the event assistance is needed to complete the package, it should be brought into the local FmHA County

Office for review. The FmHA County Office staff will review the forms for accuracy and completeness. Guidance and assistance will be given in completing Form FmHA 1910-1 and other related forms by the FmHA County Office staff. If guidance and/or assistance is needed to accurately complete the appropriate forms of the CFS or similar financial statements, the FmHA County Office staff will provide initial training to the applicants. This training can be in the form of individual or group sessions depending on the volume of applications and the availability of County Office personnel and their time. If the applicant is still unable to complete the appropriate statements after the proper training has been given, or the applicant elects not to participate in the training sessions and cannot complete the required sections of the financial statements, FmHA may require that outside assistance be obtained by the applicant. The County Supervisor will advise these applicants of the services available in the community and the approximate cost, if any, of each particular service. Assistance or guidance of this nature is available from the county Extension Service, universities, colleges, accountants, other lenders and agricultural management services. When an entity is employed by an applicant to complete or provide guidance in the completion of the appropriate financial statements, and an expense is incurred, it will be the applicant's responsibility to pay for that service. All applicants who must obtain outside assistance must be advised of this responsibility. The FmHA loan may include funds to pay these expenses if the total cost is reasonable for the type of service rendered, and if other funds are not available to pay the cost of the service.

(3) Farmer Program loan applicants who are clearly ineligible, for other than financial reasons, may not be required to complete the appropriate financial statements. Examples of this would be an EM loan applicant who is not an established farmer, or an FO loan applicant who can obtain needed credit from other sources. Application packages of this nature, completed except for the required portions of the CFS or similar financial statements, should be presented to the County Committee.

(ii) *Subsequent requests.* Requests by FmHA borrowers for additional assistance from FmHA will be processed as follows:

(A) Applicants for Farmer Programs, RH or individual LH loans, whose files contain Forms FmHA 1930-1, 1930-2,

431-2, 431-3, "Household Financial Statement and Budget," or similar financial statements which provide complete and currently accurate information, will be required to complete Form FmHA 410-9 and the following items of Form FmHA 1910-1 of Form FmHA 410-4:

- (1) Name.
- (2) Loan purpose.
- (3) Planned income for next 12 months.
- (4) Date and signature of the applicant.
- (5) For EM loans with new losses from an authorized disaster must also complete Form FmHA 1945-22, "Certification of Disaster Losses."

(B) If the financial information in the file is no longer accurate, it will be necessary to obtain a fully completed Form FmHA 1910-1 or Form FmHA 410-4, and other necessary forms as appropriate.

(C) Farmer Program applicants and borrowers must also complete or revise the CFS, Form FmHA 431-2, or similar financial statements, as appropriate to assure that an accurate farm budget is in the case file. A farm budget consists of financial data and a projected plan of operation. Completed Forms FmHA 1930-1 and FmHA 1930-2, and when appropriate, Forms FmHA 1930-3 and 1930-4, or Form FmHA 431-2, or other similar balance sheets and cash flow statements will be considered a farm budget. Farm budgets may continue to be prepared on Form FmHA 431-2, except as outlined below. The CFS or similar financial statements will gradually replace Form FmHA 431-2. FmHA personnel will be required to provide the initial training and assistance, as prescribed in this section, to indebted FmHA borrowers required to complete Forms FmHA 1930-1 and 1930-2. Borrowers requesting additional FmHA assistance will be required to use the CFS or similar financial statements in lieu of Form FmHA 431-2 as follows:

(1) *Crop year 1984.* A minimum of 10 borrowers per County Office will be placed on the CFS or similar financial statements for the 1984 crop year. A greater number of borrowers may be converted from Form FmHA 431-2 to the CFS or similar financial statements during the 1984 crop year; however, consideration must be given to the amount of available FmHA personnel and their time. Whenever possible, preference will be given to the use of the CFS form. If 10 borrowers are not placed on the CFS or similar financial statements as a result of the requirements outlined in this paragraph, the following categories, listed in

priority, will be used to obtain the 10 borrowers:

(i) Existing borrowers that volunteer to use the CFS or similar financial statements.

(ii) Borrowers requesting loans or subordinations from FmHA for annual production purposes for the 1984 crop year who have the largest FmHA indebtedness.

(2) *Crop year 1985.* A minimum of 25 percent of all indebted borrowers requesting loans or subordinations from FmHA for annual production purposes for the 1985 crop year will be required to use the CFS or similar financial statements. The borrowers required to use the CFS will be selected based on total indebtedness. All of the borrowers requesting additional loans and/or a subordination will be ranked according to their total indebtedness. The top 25 percent of these borrowers with the largest total debt will be required to use the CFS or similar financial statements. Those County Offices with relatively small Farmer Program caseloads are expected to implement the CFS more rapidly. County Offices of this nature will require the 25 percent as outlined above or 25 borrowers, whichever is greater, to use the CFS or similar financial statements when planning and evaluating loan requests. If borrowers are selected on the number basis rather than the percentage basis, the criteria for selection will again be based on those borrowers with the largest indebtedness.

(3) *Crop year 1986.* A minimum of 65 percent of all indebted borrowers requesting loans or subordinations from FmHA for annual production purposes for the 1986 crop year will be required to use the CFS or similar financial statements. This percentage will be based on total indebtedness and includes the 25 percent already converted to the CFS or similar financial statements in the 1985 crop year. All County Offices must have 65 percent, as outlined above, using the CFS or similar financial statements by the end of the 1986 crop year.

(4) *Crop year 1987.* All indebted Farmer Program borrowers requesting additional assistance from FmHA will be required to use the CFS or similar financial statements. Additional assistance from FmHA would include all loan making and servicing actions performed by FmHA to enable a borrower to continue with the operation. Examples are: Additional loans, subordinations, partial releases, deferrals, renewals.

(5) The implementation of the CFS, as described in this section, must be

accomplished unless waived by the Administrator. Conditions which would warrant a waiver must be of such a nature that normal County Office work flow would be severely disrupted. State Directors must submit to the National Office a written request for an administrative waiver, identifying the county or counties for which the waiver is requested, the existing conditions, and the reasons which would warrant approval of the waiver.

(iii) Applications from individuals or entities which have not met the above requirements with the exception of § 1910.3 (a)(2)(i)(A)(3) will not be processed. Those applicants will be advised that FmHA will not take action on the loan request until those portions of the application package for which the applicant is responsible, are completed. In addition, the applicant will be notified in writing of the information or forms needed to complete the application package. This notification letter will also advise the applicant that, after an appropriate amount of time (15 calendar days from the date of the notification letter), the incomplete application package will be returned if not completed, unless an extension of the time period is requested. FmHA's decision to return the incomplete application is *not* appealable.

PART 1924—CONSTRUCTION AND REPAIR

Subpart B—[Reserved]

2. Subpart B, consisting of §§ 1924.51–1924.82 of Part 1924 is revised and redesignated as Subpart B of Part 1930. Subpart B of Part 1924 is reserved. New Subpart B to Part 1930 reads as follows:

PART 1930—GENERAL

Subpart B—Management and Supervision of Individual Applicants and Borrowers

- Sec.
1930.51 General.
1930.52–1930.53 [Reserved]
1930.54 Objectives of management guidance and loan supervision.
1930.55 Applicant/borrower responsibilities.
1930.56 FmHA responsibilities.
1930.57–1930.100 [Reserved]

Subpart B—Management and Supervision of Individual Applicants and Borrowers

§ 1930.51 General.

This subpart prescribes the policies, authorizations, and procedures for management and supervision of

individual applicants and/or borrowers. The term "individual" as used in this Subpart also applies to farming partnerships, corporations, and cooperatives receiving Farmer Program loans. This Subpart pertains to all insured loan applicants/borrowers who depend on farm income for loan repayment, including those Farm Ownership (FO), Soil and Water (SW) and/or Operating (OL) loan applicants and borrowers who are afforded the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this Subpart.) It also provides for the necessary supervision and appropriate credit counseling for Rural Housing (RH) applicants/borrowers dependent on farm income for loan repayment. Section 514 Labor Housing (LH) borrowers with loan agreements or loan resolutions will be serviced in accordance with Subpart C of Part 1930 of this Chapter.

§§ 1930.52–1930.53 [Reserved]

§ 1930.54 Objectives of management guidance and loan supervision.

(a) The objectives of management guidance and loan supervision are to assist applicants and borrowers to:

- (1) Make profitable financial decisions, operation adjustments and land and facility improvements to their operations, including the adoption of key production and financial management practices.
- (2) Obtain or maintain a reasonable standard of living.
- (3) Use land, labor and capital wisely, efficiently, and profitably.
- (4) Pay their debts on schedule and thereby build equity in their property through debt reduction and improvements.
- (5) Graduate to other sources of credit, equipped with adequate production and financial management skills necessary to maintain a profitable operation.

(b) To accomplish these objectives, emphasis will be given by FmHA and the applicant/borrower who depend on farm income for loan repayment to the following:

- (1) Farm budgeting, including marketing. (See Exhibit B of this Subpart which is available in any FmHA County Office.) A *farm budget* consists of financial data and a projected plan of operation. A completed Form FmHA 1930-1 "Balance Sheet," and Form FmHA 1930-2, "Cash Flow Statement," and when appropriate, Form FmHA 1930-3, "Income Statement" and Form FmHA 1930-4, "Statement of Change in Financial Position" or Form FmHA 431-2, "Farm and Home Plan," will be considered a *farm budget*. If applicants

or borrowers are using financial statements that furnish the same data in a format similar to the Coordinated Financial Statements (CFS) (Forms FmHA 1930-1, 1930-2, 1930-3, and 1930-4), they may substitute those statements for the CFS.

(i) A complete farm budget will be required for those borrowers:

- (A) Receiving initial loans.
- (B) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.
- (C) Who are delinquent and/or problem case borrowers.

(ii) A typical year's farm budget will be required:

- (A) for those borrowers receiving deferments for more than one year or
- (B) when major adjustments are being made to the operation.

(iii) Documentation and revision of farm budgets.

(A) Farm budgets will be documented in sufficient detail to adequately reflect the overall condition of the operation.

(B) Initial and subsequent farm budgets will be revised whenever significant changes in the borrower's operation occur during the year. All changes will be noted on the farm budget and the borrower will initial and date the revisions.

(2) Long-time financial and production planning when the major adjustments and improvements needed must be accomplished in a period of time longer than one year. (See Chapter 10 of Exhibit B of this subpart.)

(3) Recordkeeping by borrowers. See Chapter 2 of Exhibit B of this subpart for the purpose and use of records. The various types of records and record keeping methods are discussed.

(4) Borrower supervision, such as, supervisory visits to the farm, home, or nonagricultural enterprise; meetings with borrowers on an individual or group basis; timely guidance by letter, telephone, or media releases; and contracts in the FmHA County Office. (See Chapter 8 of Exhibit B of this subpart.) The following requirements apply to farm visits:

- (i) A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, or classified as problem cases. Borrowers who have been delinquent more than 1 year will be visited by the County Supervisor once each year or more often, if determined necessary by the annual county delinquent and problem case review. District Directors should accompany the County Supervisor on field visits to delinquent and/or problem

case borrowers if determined necessary during the annual delinquent/problem case review. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(ii) Visits will be coordinated with inspections of security property required for the FmHA loan or loans owed by the borrower.

(iii) The County Supervisor will use the following priorities in scheduling routine visits:

(A) Problem case borrowers.

(B) Initial borrowers.

(C) Borrowers receiving annual production type loans.

(D) Other borrowers.

(iv) All farm visits and other contacts will be documented in the borrower's county case file.

(5) A complete annual financial and production analysis. (See Chapter 4 of Exhibit B of this subpart.) An analysis will be conducted by FmHA personnel for borrowers who are:

(i) Seriously delinquent or problem cases.

(ii) Experiencing financial and/or production management problems.

(iii) Reorganizing or implementing a major change in operations which has not been completed.

(iv) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(6) Whenever a Farmer Program initial or subsequent loan is to be made, all items of borrower responsibility enumerated on Form FmHA 1925-14, "Farmer Program Borrower Responsibilities," will be discussed and clearly understood by the applicant(s)/borrower(s). Form FmHA 1924-14 will be executed in accordance with the FMI.

(7) Whenever a Farmer Program loan exists for any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market the loan will be considered a nonfarm enterprise loan. The same general policies covered in this Subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be substituted for the nonfarm enterprise. Form FmHA 431-4, "Business Analysis Nonagricultural Enterprise," and FmHA 432-10, "Business and Family Record Book," can be used for these purposes.

§ 1930.55 Applicant/borrower responsibilities.

(a) It is the sole responsibility of the applicant/borrower to submit a complete written application package to FmHA as prescribed in Subpart A of Part 1910 of this chapter.

(b) It is imperative that applicants/borrowers participate in the planning and analysis of their operations and in the decisions made relative to resolving their major management and financial problems.

(c) It is the applicant's/borrower's responsibility to initiate and carry out the adjustments, improvements, and key managerial practices agreed upon with FmHA.

(d) Borrowers must maintain a suitable recordkeeping system which has been approved by FmHA. This system must provide adequate information to enable a monthly cash flow statement, beginning and end of year balance sheets, a change in financial position statement, and an income statement to be constructed. In addition, it would be helpful if the recordkeeping system provided sufficient information to allow for a complete enterprise analysis.

(e) Borrowers are responsible for making payments, as scheduled, on all loans and for maintaining security. Borrowers must receive written consent from FmHA before selling or otherwise disposing of collateral taken as security for FmHA loans.

(f) Borrowers are responsible for meeting the requirements as set out in Form FmHA 1924-14.

§ 1930.56 FmHA responsibilities.

All borrowers will be given guidance and advice to help assure a successful operation, compliance with their agreements and obligations, and protection of the Government's financial interest. Management assistance and supervision rendered by FmHA does not relieve borrowers of their own responsibilities and obligations to make a diligent effort in developing and maintaining a successful operation.

(a) *County Supervisors.* Management assistance and supervision of Farmer Program and individual RH loan applicants/borrowers are the responsibility of the County Supervisor. (See Chapter 8 of Exhibit B of this subpart.) The County Supervisor will determine and select the appropriate method of supervision to be used in assisting each borrower.

(b) *District Directors.* District Directors will keep currently informed with respect to the management assistance and supervision being provided applicants and borrowers in

each County Office area. District Directors will take the necessary corrective action or provide such additional training, with assistance from State Office staff members when needed, as is necessary to assure that the policies and procedures outlined in this Subpart are carried out in an acceptable manner.

(c) *State Directors.* State Directors are responsible for seeing that an effective management and supervisory program is carried on in their State(s). State Directors may supplement this Subpart as deemed necessary to:

(1) Assure that a uniform and effective management and supervision program is developed and maintained within their State(s), and to assign specific responsibilities to District Directors and other members of the State staff to accomplish this objective.

(2) Obtain information, analyze and evaluate the performance of borrowers and the results of management and supervision carried out in each County Office.

(3) Assure key farm management and financial management practices are established and kept current in each County Office.

§§ 1930.57-1930.100 [Reserved]

PART 1941—OPERATING

Subpart A—Operating Loan Policies, Procedures and Authorizations

3. Section 1941.4 is amended by redesignating paragraphs (a) through (e) as (b) through (f) and paragraphs (f) through (o) as (h) through (q) respectively and adding new paragraphs (a) and (g) to read as follows:

§ 1941.4 Definitions.

(a) *Applicant.* an individual or entity requesting OL loan assistance from FmHA. FmHA's policy is to make OL loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract).

(g) *Farm Budget.* (See § 1930.54(b)(1) of Subpart B of Part 1930 of this Chapter.)

4. Section 1941.16 is amended by adding paragraph (l) to read as follows:

§ 1941.16 Loan purpose.

(l) Payment of reasonable expenses customarily paid when obtaining, planning, making, and closing the loan

such as fees for legal, architectural, and technical services which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of social security taxes for labor hired by the borrower in connection with planning and development.

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

5. Section 1945.154 is amended by revising paragraph (1) of paragraph (a) and by redesignating paragraphs (14) through (36) of paragraph (a) as paragraphs (15) through (37) respectively and adding a new paragraph (14) to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) * * *

(1) *Applicant.* The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA. FmHA's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract).

(14) *Farm budget.* (See § 1930.54(b)(1) of Subpart B of Part 1930 of this Chapter.)

6. Section 1945.166 is amended by revising paragraphs (a)(2)(x), (c)(2)(v), and (c)(3)(xi) to read as follows:

§ 1945.166 Loan purposes.

(a) * * *

(2) * * *

(x) Payment of reasonable expenses customarily paid when obtaining, planning, and closing an actual loss loan, such as fees for legal, architectural, and other technical services which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of social security taxes for labor hired by the borrower in connection with land and building development.

(c) * * *

(2) * * *

(v) Pay reasonable expenses customarily paid when obtaining, planning, making, and closing a loan made for real estate purposes, such as fees for legal, architectural, and other technical services, which are required to be paid by the applicant and which cannot be paid by the applicant from

other resources. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(3) * * *

(xi) Pay reasonable expenses customarily paid when obtaining, planning, and closing a loan made for operating purposes, i.e., fees for legal, architectural and other technical services which are required to be paid by the applicant and which cannot be paid by the applicant from other resources.

7. Section 1945.167 is amended by revising paragraph (g) to read as follows:

§ 1945.167 Loan limitations and special provisions.

(g) *Record Keeping.* EM borrowers receiving or indebted for EM loans are required to keep hard farm records on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for three years. (See Subpart B of Part 1930 of this chapter.)

8. Section 1945.175 is amended by revising paragraph (b)(1) to read as follows:

§ 1945.175 Options, planning and appraisals.

(b) *Planning.* (1) Farm budgets will be completed as provided in Subpart B of Part 1930 of this Chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. The plan will show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically this will reflect the depreciating value of machinery, equipment, or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, Form FmHA 1930-2, "Cash Flow Statement," or a similar cash flow statement, will be prepared showing the specific amount to be disbursed for each

associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system or, when needed, through supervised bank accounts.

[7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70]

Dated: October 24, 1983.

Charles W. Shuman,
Administrator, Farmers Home
Administration.

[FR Doc. 83-30101 Filed 11-7-83; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is issuing for public comment a revision of Part 336 of its rules and regulations, 12 CFR Part 336, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include increasing the categories of employees subject to credit restrictions; easing existing restrictions on credit from affiliates of prohibited creditors; permitting assumptions of home mortgage loans from prohibited creditors; easing existing restrictions on ownership of bank securities; reporting of family member employment by insured banks; and increasing the categories of employees reporting indebtedness. In addition, the regulation has been redrafted in simple English and reorganized along functional lines.

DATE: Comments must be submitted by January 9, 1984.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, D.C. 20429, or hand-delivered to Room 6106 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Hoyle L. Robinson, Executive Secretary and Ethics Counselor, at (202) 389-4425, or Emily F. Samaha, Deputy Ethics Counselor, at (202) 389-4446.

SUPPLEMENTARY INFORMATION: As stated, Part 336 sets out FDIC rules relating to the ethical and other

standards of conduct expected of FDIC employees and special employees. As revised, the regulation would be comprised of five subparts, each of which is discussed separately below.

Subpart A. This subpart sets out the definitions and administrative provisions which control throughout the regulation. Generally, the administrative provisions are the same as in the present regulation. Under these provisions, each employee is responsible for compliance with the regulation; the Ethics Counselor is responsible for FDIC's ethics program; the Executive Secretary is designated as the Ethics Counselor; adverse determinations by the Ethics Counselor or the appropriate director can be appealed to the Chairman; and applicable sanctions for violations are set out.

A number of new definitions are established; many are self-explanatory and are not discussed. Noteworthy changes include the following. The term "affiliate" would no longer incorporate the definition as established in section 23A of the Federal Reserve Act because it is believed that definition, as amended by the Garn-St Germain Act, is too broad for the purposes of Part 336. Instead, it is proposed that "affiliate" would include any holding company, subsidiary of the holding company and any other entity defined as an affiliate in 12 U.S.C. 221a, which generally includes subsidiaries of the bank and entities with common directors. "Assisted or assuming institution" would be any institution, including a bank, savings and loan association or other financial entity, which has entered into a transaction with the FDIC pursuant to section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823), if the relationship with the FDIC is still in effect. Transactions under section 13(i) would not be covered, as such do not involve the liquidation of assets or other receivership functions involving liquidation personnel. An "insured bank subject to audit for deposit insurance assessment purposes" would mean any of the 500 largest insured banks. These banks are, or most likely would be, routinely audited by FDIC assessment auditors. The Division of Accounting and Corporate Services would prepare and distribute a list of such banks to the auditors. "Liquidation counsel" would be any attorney employed by the FDIC who is assigned to a liquidation office, whether an area, field or similar office. The term would not include attorneys assigned to the General Counsel's office in Washington. "Liquidator" would include all employees of the Division of

Liquidation except for clerical employees. The latter four definitions are relevant in connection with the proposed restrictions on employees accepting credit from certain borrowers.

Subpart B. This subpart, for the most part, incorporates the provisions of 5 CFR Part 735, the U.S. Office of Personnel Management regulation which establishes government-wide standards of conduct for Federal employees. As the FDIC is required to incorporate the provisions, they will not be discussed in great detail.

Proposed changes include the following. Section 336.8, which relates to the acceptance of gifts, entertainment, favors and loans from persons affected by an FDIC decision, has been revised in several ways to improve its clarity. First, existing provisions relating to prohibitions on the acceptance of loans would be deleted from this provision and, as revised, consolidated into a new section (§ 336.16). Second, existing provisions relating to travel expenditures also would be deleted from this provision and consolidated into a new section (§ 336.9). Third, while the exception for the acceptance of food and refreshments in the ordinary course of a meeting or conference would remain, the provision would be revised to make clear that the exception only applies if the meeting/conference is within the scope of the employee's duties and responsibilities. Fourth, a new subsection would be added which provides that prohibited gifts or items of monetary value which are received by an employee are to be returned to the sender at the FDIC's expense or otherwise disposed of as directed by the Ethics Counselor.

Proposed new § 336.9 would set out FDIC's policy regarding payment of travel expenses. Under this provision, an employee may not accept payment from a private source for travel, lodging or subsistence expenses incurred while the employee is on official duty. An exception to the general rule would be where there is no practical alternative to acceptance, in which case a report is required. This restriction would not apply when the employee is not on official duty, so long as the acceptance of such expenses does not create a conflict of interest or the appearance thereof.

Under the existing regulation, members of the Board of Directors are prohibited from accepting compensation or any other thing of monetary value in return for any speech, publication or similar activity which relates substantially to the FDIC or contains confidential information. The provision

would be extended to all employees (§ 336.11).

A new section would be added relating to FDIC employment of persons who are relatives of existing employees (§ 336.12). First, in accordance with existing U.S. Office of Personnel Management policy, the regulation would provide that no official may appoint, employ, promote or advance a relative to a position at the FDIC, advocate such an action or take such an action when advocated by another official. An "official" is any employee who has authority to appoint, employ, etc., and a relative is a person within the established degree of kinship, including spouses, children, parents and siblings. Second, this section provides that no employee may be a supervisor of any relative. A supervisor is defined as an employee authorized to take or recommend certain personnel actions, including employment, assignment, or suspension. In the event an employee were to become a supervisor of a relative, the supervisor would have to report that fact to the appropriate director. The appropriate director, along with the Director of FDIC's Office of Personnel Management and the Ethics Counselor, would determine whether the employee could be assigned to a position outside the scope of the supervisor's authority.

Subpart C. This subpart sets out FDIC's rules relating to financial interests and outside activities of employees. As in the present regulation, employees generally are prohibited from having financial interests or obligations that conflict or appear to conflict with the employees' FDIC duties and responsibilities. Also, the proposed regulation (§ 336.15(b)) would generally reflect the provisions of section 208 of title 18 of the United States Code, a Federal criminal statute, and provide that an employee may not personally and substantially participate in any decision, approval, recommendation, examination or other action in which the employee, the employee's spouse or dependent child, or organization in which the employee serves in an official capacity, has a financial interest. The employee may nonetheless participate in such action where the interest is specifically permitted by Part 336 or approved by the Ethics Counselor.

The subpart also addresses the following specific areas: permissible extensions of credit; ownership of bank securities; purchase of FDIC property and providing services to the FDIC; outside employment activity and employment of family members by banks. These areas are discussed below.

As stated, the rules relating to extensions of credit would be revised and consolidated into proposed § 336.16. The changes would, first, enlarge the categories of employees subject to restrictions. Presently only examiners, senior staff and regional counsel are restricted as to permissible creditors. Under the proposed regulations, assessment auditors, individual Board members and assistants to assistants or deputies to the Board or individual Board members, and liquidators and liquidation counsel would be prohibited from obtaining credit, including credit through the use of a credit card, from, respectively, insured banks subject to audit for deposit insurance assessment purposes, insured nonmember banks, and assisted or assuming banks. The addition of the blanket restrictions on the identified categories of employees is believed necessary to avoid conflicts of interest and, particularly, appearances thereof, as these employees frequently participate in FDIC actions relating to the prohibited creditors. The second change would ease existing restrictions on the acceptance of credit from affiliates of prohibited creditors. Under existing rules, only extensions of credit from affiliates by means of a credit card (where the amount does not exceed \$5,000 and is on terms no more favorable than those available to the general public) are permitted; all other extensions of credit from affiliates are prohibited. These restrictions would be eliminated under the proposed rules; any extension of credit from an affiliate would be permitted. Employees would be disqualified, however, from taking part in any FDIC action relating to the affiliate whenever the credit exceeded \$10,000. (An examiner could not participate in any examination relating to an insured bank affiliate which had extended credit to the examiner regardless of the amount: 18 U.S.C. 213.)

Further, the Ethics Counselor, in consultation with the appropriate director, could disqualify the employee from participating in any FDIC action relating to the prohibited creditor if he/she determined disqualification was necessary in order to avoid conflicts or appearances thereof. This change is proposed as the effect of the present restriction has been unduly harsh on FDIC employees, particularly examiners. Because of the consolidation occurring in the banking industry, FDIC employees have experienced difficulty in obtaining necessary credit. The present proposal should alleviate this difficulty while at the same time ensuring that conflicts of interest or the appearance thereof are minimized. The third change would

permit an employee to assume a mortgage loan for his/her personal residence even when the loan is from a prohibited creditor. Assumption would be permitted if: the employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor; the assumption is on terms no more favorable than those available to the general public; the prior approval of the Ethics Counselor is obtained; and the employee is disqualified from participating in any FDIC action relating to the creditor. This provision is proposed because of the great difficulty FDIC employees experienced in obtaining home mortgage loans in the recent period of high interest rates. While the proposed easing of restrictions on borrowing from affiliates of prohibited creditors should reduce this difficulty considerably, the further exception for home mortgages is believed warranted because housing is a necessity and FDIC employees might otherwise be unduly penalized in obtaining affordable housing solely by reason of their employment. Since the employee would be disqualified from participating in any action relating to the creditor, there should be no conflict of interest or the appearance thereof and no violation of 18 U.S.C. 213, in the case of an examiner.

Proposed rules relating to employee ownership of bank securities are set out in § 336.17. As with the present rule, employees would generally be prohibited from directly or indirectly owning or controlling any securities of an insured bank or its affiliates. An exception from the general prohibition would be interests acquired prior to commencement of employment or through circumstances beyond the employee's control (e.g., inheritance, gift, marriage, corporate mergers). Employees would have to disclose any retained interest to the Ethics Counselor and would be disqualified from participation in any FDIC action relative to the bank, unless the Ethics Counselor determined that the interest is too inconsequential to affect the integrity of the employee's services to the FDIC. The Ethics Counselor would retain the right to require divestiture where retention and subsequent disqualification would prevent an employee from fulfilling his/her FDIC duties and responsibilities. The "so small" test of the existing rule would be eliminated. Experience has shown that, in individual cases, this has been a difficult and uneven standard to apply and has created unnecessary hardships. Disqualification should prevent conflicts of interests.

Proposed §§ 336.18 and 336.19 would incorporate existing FDIC policy regarding the purchase of property from and the providing of services to the FDIC. Employees and related interests would be prohibited from purchasing any property held by the FDIC in its capacity as receiver, liquidator or liquidating agent of the assets of a failed bank. Employees would be permitted to purchase property held by the FDIC in its corporate capacity once it is declared surplus and the manner of sale ensures that the property's fair market value is obtained. Finally, employees and related interests would generally be prohibited from providing commercial goods or services to the FDIC, in either of its capacities, unless it is determined to be in FDIC's best interests to acquire such from its employees or their related interests.

Proposed § 336.20 relates to outside employment and other outside activities of employees. While its operative rules remain unchanged from the existing regulation, the proposed regulation would specifically reference activities which are likely to be incompatible with an employee's services to the FDIC. These (or similar activities) have previously been found in individual cases to be incompatible with an employee's FDIC duties and responsibilities and are incorporated into the regulation in order to provide guidance to employees. These activities include: service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor to, or in any other capacity with, any financial institution, including a bank, a savings and loan association and a credit union (but excluding the Federal Deposit Employees' Federal Credit Union); and service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter or other person engaged in providing financial services. In addition, this section would provide that the negotiation or arrangement of future employment with a person whose interests may be affected by an employee's performance of his/her FDIC duties may be prohibited. This provision is based on Section 208 of title 18 of the United States Code, a Federal criminal statute, and is added to assist employees in avoiding violations of that law.

Proposed § 336.21 is new. This section, which relates to the employment by insured banks of certain family members of employees, would be

added to ensure consistency of treatment of similarly situated employees. Presently, such situations are handled by each region or division on an ad hoc basis. Under the proposed rule, certain employees must report to the appropriate director any employment by an insured bank or its affiliate of a spouse, child, parent, sibling or member of the employees' immediate households. Employees subject to this requirement are: examiners, assessment auditors, attorneys, corporate auditors, liquidators, voting members and designees appointed to any standing committee, members of the Board and senior staff. Whenever an employee has a family member employed by a bank or affiliate, the employee would generally be disqualified from participating in any action involving the bank. Exceptions to disqualification would be based on the nature of the family member's employment, with disqualification being less likely if the position is clerical or nonpolicy making in nature.

Subpart D. This subpart sets out FDIC rules relating to the filing of required reports by FDIC employees. Significant changes are proposed with regard to reports of indebtedness and of financial interests. No significant changes would be made to reports of interest in FDIC decision or those required under the Ethics in Government Act and these will not be discussed.

As to indebtedness reports, presently only examiners must file such. Under the proposed rule (§ 336.22), any employee subject to credit restrictions under proposed § 336.16 would also have to report his/her indebtedness from insured banks and affiliates. The report is necessary in order to monitor compliance with the substantive restrictions. Employees required to file reports would be: examiners, other employees of the Division of Bank Supervision at or above the grade 11 level, assessment auditors, liquidators, attorneys, members of the Board (except the Comptroller) and senior staff. In addition, the regulation would incorporate existing policy and require examiners to report indebtedness from noninsured banks. Also, since institutions other than banks may be involved in transactions under section 13 of the Federal Deposit Insurance Act, liquidators and liquidation counsel must report indebtedness from any insured institution. The Ethics Counselor would be authorized to require any other employee to file reports of indebtedness if it is determined that the employee's action could have an economic impact on insured banks.

Reports are to be on an official form, which discloses the identity of the creditor and particulars of the credit (e.g., the amount, kind of credit, maturity, interest rate, date credit paid). Reports must be filed whenever a loan is obtained, repaid or a term altered. An annual report listing all outstanding extensions of credit as of December 31 is also required. Reports are generally made to the appropriate division, regional or area director, who is primarily responsible to ensure that extensions of credit comply with Part 336. Copies of these reports are furnished to the Ethics Counselor. All reports will be held in confidence.

As to statements of employment and financial interests, several changes would be made as to the employees required to file. First, employees of the Divisions of Liquidation and Bank Supervision who are at or above grade 11 would have to file under the proposed rule; whereas, presently only employees at or above the grade 13 level file. Second, assistants to assistants or deputies to the Board or individual Board members, voting members or designees to standing committees, and the Alternate and Deputy Ethics Counselors would also be required to file statements. These positions would be required to file as they involve decision or policy-making characteristics. The filing of the financial statements will help prevent conflicts of interest or appearances thereof by such employees' participation in FDIC actions.

Also, the operative date for the statements would be December 31 instead of June 30. A year-end date is proposed because many persons must collect their financial papers at this time for tax purposes. Such a filing date may reduce the paperwork burden on employees. (It is noted that if the December date is adopted as a final rule, the next filing would be December 1984.) Another change would be to eliminate the provision permitting employees to only report that no changes have occurred since the previous filing. Instead, a complete report would be required each year. This provision would be eliminated as experience has shown that employees often report no changes have occurred when in fact there have been changes.

As with the existing regulation, financial statements would be reviewed by the Ethics Counselor and would be confidential.

Subpart E. This subpart relates to the standards of conduct applicable for special employees. No major changes have been made in this subpart.

As the proposed revision relates solely to FDIC employees, it would not have a significant economic impact on a substantial number of small entities and would not impose any recordkeeping or reporting requirements on any person (other than an FDIC employee). Thus, under FDIC's policy statement on drafting regulations, entitled "Development and Review of FDIC Rules and Regulations," a cost-benefit analysis is not required.

List of Subjects in 12 CFR Part 336

Conflicts of interest, Credit, Disclosure requirements, Government employees.

Accordingly, the Board of Directors proposes that Part 336 be revised as follows:

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Scope, Definitions and Administrative Provisions

Sec.

- 336.1 Scope.
- 336.2 Definitions.
- 336.3 Employee responsibility, counseling and distribution of regulation.
- 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor and Deputy Ethics Counselors.
- 336.5 Review of adverse determinations.
- 336.6 Sanctions.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

- 336.7 General rules.
- 336.8 Gifts, entertainment, favors and loans.
- 336.9 Travel expenses.
- 336.10 Use of official information.
- 336.11 Lectures, speeches and manuscripts.
- 336.12 Employment by FDIC of relatives.
- 336.13 Use of FDIC property.
- 336.14 Indebtedness, gambling and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

- 336.15 General rules.
- 336.16 Extensions of credit.
- 336.17 Bank securities.
- 336.18 Purchase of property from the FDIC.
- 336.19 Providing goods or services to the FDIC.
- 336.20 Outside employment and other activity.
- 336.21 Employment of family members.

Subpart D—Reports of Indebtedness and Interest in FDIC Decision; Statements of Employment and Financial Interests

- 336.22 Report of indebtedness.
- 336.23 Report of interest in FDIC decision.
- 336.24 Statement of employment and financial interests.
- 336.25 Financial disclosure reports under the Ethics in Government Act.

Subpart E—Ethical and Other Conduct and Responsibilities of Special FDIC Employees

- Sec.
 336.26 Use of FDIC employment.
 336.27 Use of inside information.
 336.28 Coercion.
 336.29 Gifts, entertainment, favors and loans.
 336.30 Miscellaneous statutory provisions.
 336.31 Statements of employment and financial interests.
 Authority: E.O. 11222, 3 CFR 1964-1965 Comp.; 5 CFR 735.104.

Subpart A—Scope, Definitions and Administrative Provisions**§ 336.1 Scope.**

This part establishes the policies and procedures of the FDIC with regard to the ethical and other standards of conduct and responsibilities for employees and special employees. Permissible financial interests, obligations and outside employment are set forth. This part further sets out the policies and procedures for employee reporting of financial interests and obligations.

§ 336.2 Definitions.

For the purposes of this part:

- (a) "Affiliate" means any holding company of which the bank is a subsidiary, and other subsidiary of the holding company, and any other entity defined as an affiliate under 12 U.S.C. 221a, and "subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.
- (b) "Appropriate director" means the head of the division or office to which an employee is assigned.
- (c) "Assisted or assuming institution" means, respectively, any institution which has received financial assistance from or which has entered into a purchase and assumption transaction with the FDIC under section 13 of the Federal Deposit Insurance Act (except for transactions under section 13(i)), but only to the extent that a financial and/or contractual relationship exists between the institution and the FDIC.
- (d) "Attorney" means any individual employed as an attorney whether assigned to the Legal Division, another Washington Office or Division, a regional office, an area office or a liquidation field office, but the term does not include outside attorneys retained by the FDIC but otherwise engaged in the private practice of law.
- (e) "Chairman" means Chairman of the Board of Directors of the FDIC.
- (f) "Dependent child" means a son, daughter, stepson or stepdaughter who is either (1) unmarried, under 21 and living in the employee's household, or (2) has received over half of his or her

support from the employee in the preceding calendar year.

(g) "Employee" means any individual Board member, officer or employee, including a liquidation graded employee, of the FDIC, but does not include a special employee.

(h) "Examiner" means any commissioned bank examiner and any employee assigned to the Division of Bank Supervision in a position of the 570 series.

(i) "Insured bank subject to audit for deposit insurance assessment purposes" means any one of the 500 largest insured banks which are routinely audited by the FDIC for assessment purposes.

(j) "Liquidation counsel" means any individual employed by the FDIC as an attorney and assigned to an area office or a liquidation field office.

(k) "Liquidator" means any employee of the Division of Liquidation, including a liquidation graded employee, assigned to an area office, a liquidation field office or the Washington Office but does not include any clerical employee, as determined by the Director of the Division of Liquidation.

(l) "Member of the employee's immediate households" means a person who is related to the employee by blood, marriage or adoption and who resides in the same household as the employee.

(m) "Person" means an individual, bank, corporation, company, association, partnership, firm, society, or any other organization or institution.

(n) "Regional counsel" means any individual employed by the FDIC as an attorney and assigned to a regional office.

(o) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(p) "Special employee" means any employee serving with or without compensation for up to 130 days during any 365-day period on a full time or intermittent basis.

§ 336.3 Employee responsibility, counseling and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide to each new employee and special employee a copy of this part within 90 days of commencement of employment. The Ethics Counselor shall annually distribute a reminder to each employee and each special employee of the basic provisions of this part.

§ 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor and Deputy Ethics Counselors.

(a) The FDIC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the FDIC's Ethics Counselor.

(b) The Chairman shall appoint an Alternate Ethics Counselor, who shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part.

§ 336.5 Review of adverse determinations.

An employee or special employee may appeal an adverse determination under this part to the Chairman within 20 days of receipt of notice of such determination. Any such appeal shall be in writing and shall contain a statement of reasons therefor. The Chairman will promptly review the matter and shall provide written notice to the employee of his or her determination.

§ 336.6 Sanctions.

Any violation of this part by an employee or special employee may be cause for remedial or disciplinary action, which may be in addition to any penalty prescribed by law. Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order and regulation. Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, changes in assigned duties, or disqualification for a particular assignment.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees**§ 336.7 General rules.**

(a) In order to assure the proper performance of FDIC business and to maintain public confidence in Government, FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality and conduct and to avoid

misconduct and conflicts of interest, or the appearance of conflicts of interest.

(b) No employee shall engage in any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding the FDIC's efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making an FDIC decision outside official channels; or
- (6) Adversely affecting the public's confidence in the integrity of the FDIC.

§ 336.8 Gifts, entertainment, favors and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value from a person who:

- (1) Has or seeks contractual or other business or financial relationships with the FDIC;
- (2) Is or may be regulated or examined by the FDIC; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions or paragraph (a) of this section do not apply:

- (1) Where it is clear from the circumstances that personal or family relationships are the sole motivating factors and that business or financial interests are not motivating factors;
- (2) To the acceptance of food, refreshments and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of an official conference, official meeting or other official function at which the employee is properly in attendance;
- (3) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal intrinsic value; and
- (4) Except as otherwise provided in § 336.16, to the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees.

(c) No examiner shall accept any gratuity from any insured nonmember bank, from any insured bank examined by the examiner, or any person connected therewith (18 U.S.C. 213).

(d) Whenever an employee receives an unsolicited gift or other item of monetary value, the acceptance of which is prohibited by paragraph (a) or

(c) of this section, the gift or item shall be returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the FDIC.

(e) No employee may solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior or accept a gift from an employee receiving less pay, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness or retirement (5 U.S.C. 7351).

(f) No employee may accept a gift, present, decoration or other thing from a foreign government except as permitted by law (5 U.S.C. 7342).

§ 336.9 Travel expenses.

(a) It is the policy of the FDIC that expenses of travel, lodging and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the FDIC (in accordance with FDIC General Travel Regulations) and that an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging or subsistence from a private source while on official duty. The employee must report within 30 days the acceptance, value and circumstances thereof to the appropriate director and the Ethics Counselor.

(c) When an employee is not on official duty and there is no payment or reimbursement by the FDIC for expenses of travel, lodging or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(d) For the purpose of this section, "subsistence" does not include food or refreshment accepted on infrequent occasions in the ordinary course of an official function as permitted by § 336.8(b)(2).

§ 336.10 Use of official information.

(a) An employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her FDIC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest, except as permitted in § 336.11.

(b) An employee may not maintain, disclose or otherwise use personal

information in a manner which violates the Privacy Act, 5 U.S.C. 552a, or Part 310 of FDIC's regulations.

(c) An examiner may not disclose information from a bank examination report except as authorized by law (18 U.S.C. 1906).

(d) An employee may not disclose confidential business information except as authorized by law (18 U.S.C. 1905).

§ 336.11 Lectures, speeches and manuscripts.

(a) No employee shall publish any material or speak before banking or public organizations on matters involving the FDIC unless the employee receives the prior approval, and prior clearance of material to be published, by the appropriate director.

(b) An employee shall not use in any teaching, lecturing, speaking or writing engagement information obtained as a result of his or her FDIC employment unless the information is available to the general public or the appropriate director gives authorization of the use, upon the determination that the use of the information is in the public interest.

(c) No employee may receive any compensation or other thing of monetary value for any speech, lecture, publication or similar engagement, the subject matter of which either relates substantially to matters involving the FDIC or contains information that is not otherwise available to the general public.

(d) No employee may accept an excessive honorarium for any appearance, speech or article (2 U.S.C. 441i).

§ 336.12 Employment by FDIC of relatives.

(a) For the purpose of this section:

(1) A "relative" is any person related to an FDIC official as parent, step-parent, child, step-child, sibling, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law;

(2) An "official" is any employee who has authority to appoint, employ, promote or advance employees or to recommend anyone for appointment, employment, promotion or advancement at the FDIC;

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances or furlough any person or to recommend any such action.

(b) An FDIC official may not:

(1) Appoint, employ, promote or advance any relative to a position at the FDIC;

(2) Advocate a relative's appointment, promotion or advancement at the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c) (1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor or a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the director of FDIC's Office of Personnel Management and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the director of FDIC's Office of Personnel Management and the Ethics Counselor shall determine whether the relative may be assigned to another position at the FDIC which is outside the scope of the supervisor's authority.

§ 336.13 Use of FDIC property.

An employee shall not, directly or indirectly, use or allow the use of any kind of FDIC property, including leased property, for other than officially approved activities. An employee has a positive duty to protect and conserve FDIC property, including equipment, supplies and other property entrusted or issued to the employee.

§ 336.14 Indebtedness, gambling and other conduct.

(a) *Indebtedness.* An employee shall pay his or her just financial obligations in a manner such that the FDIC will not be asked to assist in the collection of the obligation. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court. An employee who has difficulty in meeting his or her financial obligations may seek counseling with FDIC's Office of Personnel Management. This does not require the FDIC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity,

including gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the FDIC or while on duty for the FDIC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest or other conduct prejudicial to the FDIC.

(d) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) Prohibitions relating to bribery, conflicts of interest and graft (18 U.S.C. 201 *et seq.*).

(2) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(3) Prohibitions against disloyalty and striking (U.S.C. 7311, 18 U.S.C. 1918).

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783).

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(6) Prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719).

(8) Prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(9) Prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(11) Prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(12) Prohibitions against embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(13) Prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(14) Prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607 and 608.

(15) Prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(16) The "Code of Ethics for Government Service," which prescribes general standards of conduct. Pub. L. 96-303, 94 Stat. 855-856.

Subpart C—Financial Interests and Obligations: Outside Employment

§ 336.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's FDIC duties and responsibilities.

(b) No employee may participate personally and substantially in any decision, approval, disapproval, recommendation, rendering of advice, examination or other action in which the employee, the employee's spouse, dependent child, partner or organization in which the employee serves as an officer, director, trustee, partner or employee, has a financial interest (other than a deposit) unless (1) the financial interest is specifically permitted in this part or (2) the employee receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is too inconsequential to affect the integrity of the employee's service to the FDIC. An employee may disqualify himself or herself from participation in any matter in which he or she has a financial interest by advising the appropriate director and the Ethics Counselor that disqualification is required by this provision. Any such interest shall be reported to the Ethics Counselor and the appropriate director on a prescribed form.

§ 336.16 Extensions of credit.

(a) An examiner, assessment auditor, liquidator, liquidation counsel, regional counsel, member of the Board (except the Comptroller of the Currency), assistant or deputy to the Board or an individual Board member (except the Comptroller of the Currency) and any assistant thereto, division or office head and the holder(s) of the position(s) immediately subordinate to such division or office head, may not, directly or indirectly, accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from a prohibited creditor. For the purposes of this section, "prohibited creditor" is an insured nonmember bank, in the case of an examiner, a member of the Board, an assistant or deputy to the Board or an individual Board member and assistant thereto, a division or office head and the holder(s) of the position(s) immediately subordinate to such division or office head; an insured bank subject to audit for deposit insurance assessment purposes, in the case of an assessment auditor; an assisted or assuming institution, in the case of a liquidator or

liquidation counsel; and an insured nonmember bank whose principal place of business is within the region in which the attorney is assigned, in the case of a regional counsel.

(b) If the adoption of this regulation, commencement of employment, or action affecting the status of the creditor results in an extension of credit prohibited by paragraph (a) of this section, that extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. In the case of credit extended through the use of a credit card issued by a prohibited creditor, the credit card must be returned to the creditor. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall (1) be disqualified from participating in any decision, examination, audit or other action having an impact on the creditor and (2) promptly report that retention as provided for in § 336.22(c).

(c) An employee subject to the restriction of paragraph (a) of this section may accept or become obligated on an extension of credit from an affiliate of a prohibited creditor (if the affiliate itself is not a prohibited creditor). The employee shall be disqualified from participating in any decision, examination, audit or other action having an impact on the affiliate whenever the total amount of the credit exceeds \$10,000 at any time; *Provided*, that an examiner shall be disqualified from participating in any examination of an insured bank affiliate which has extended credit to the examiner regardless of the amount of credit. Further, the Ethics Counselor, in consultation with the appropriate director, may disqualify an employee from participating in any examination, audit or other action having an impact on the prohibited creditor if it is determined that the extension of credit from the affiliate may present a conflict of interest or the appearance thereof.

(d) Notwithstanding the restriction of paragraph (a) of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

- (1) The loan is for the employee's personal residence;
- (2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The assumption is made on terms no more favorable than those available to the general public;

(4) The employee receives the prior approval of the Ethics Counselor, who shall consult with the appropriate director; and

(5) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the creditor.

(e) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless—

(1) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser or guarantor;

(2) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse or dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(3) The spouse or dependent child has the income, the ability and the means to meet the loan obligation at maturity.

§ 336.17 Bank securities.

(a) While employed by the FDIC an employee may not own or control, directly or indirectly, any securities of an insured bank or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board) may own or control securities of an insured bank or affiliate thereof whenever—

(i) Ownership or control was acquired prior to commencement of FDIC employment or through circumstances beyond the employee's control, such as inheritance, gift, change in marital status, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the bank or affiliate; *Provided*, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary as the employee's interest is too inconsequential to affect the integrity of the employee's services to the FDIC.²

¹ Such actions include mergers, acquisitions, transactions under § 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

² Employees who have received approval under previous regulations to retain an interest need not report that interest under this section.

An employee may own or control additional securities which result from a stock split, stock dividend, reinvestment of dividends or the exercise of preemptive rights arising out of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her FDIC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured bank or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds or investment trusts but only if (1) the assets of the holding company, mutual fund or investment trust consist primarily of securities of nonbank entities and (2) the employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund or investment trust. Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the FDIC.

(d) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless—

(1) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(2) The interest is not in any way, past or present, derived from the income, assets or other activity of the employee; and

(3) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

§ 336.18 Purchase of property from the FDIC.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its capacity as receiver, liquidator or liquidating agent of the assets of a bank.

(b) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its corporate capacity unless (1) the property has been declared surplus property by the Director of the Division of Accounting and Corporate Services in accordance with standards and procedures approved by the Board of Directors and (2) the property is sold at

a public auction or by other means which assure that the selling price is the property's fair market value. In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the FDIC in reliance upon information obtained by the employee in the course of his or her employment with the FDIC, other than knowledge of the proposed sale of the property, which is not available to the general public.

§ 336.19 Providing goods or services to the FDIC.

An employee, the employee's spouse or dependent child or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the FDIC either in its corporate capacity or in its capacity as receiver, liquidator or liquidating agent of the assets of a bank unless the Director of the Division of Accounting and Corporate Services or the Director of the Division of Liquidation determines, in accordance with standards and procedures approved by the Board of Directors, that it is in the best interest of the FDIC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the FDIC.

§ 336.20 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her FDIC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the FDIC. Employment or activity which is not compatible with the employee's duties and responsibilities to the FDIC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the FDIC. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any financial institution, including a bank, a savings and loan association and a credit union, except the Federal Deposit Employees' Federal Credit Union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment

company, investment fund, mutual fund, insurance company, stockbroker underwriter or any other person engaged in providing financial services; or

(3) The negotiation or arrangement of future employment with a person whose interests may be directly and substantially affected by the employee's performance of his or her FDIC duties and responsibilities (18 U.S.C. 208).

Any employee who engages in, or intends to engage in, outside employment or activity has the responsibility to consult with the Ethics Counselor as to whether such employment or activity results in or creates an appearance of a conflict of interest with the employee's FDIC duties and responsibilities.

(b) An examiner shall not perform any service for compensation for any bank, or any officer, director or employee thereof, or any person connected therewith (18 U.S.C. 1909).

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for service to the FDIC (18 U.S.C. 209).

(d) This section does not preclude an employee from participating in the activities of (1) charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service or civic organizations or (2) if not prohibited by law, national or state political parties.

§ 336.21 Employment of family members.

In order to avoid conflicts of interest or the appearance of a conflict, the below identified employees shall report to the appropriate director the employment by, or service in another capacity with, an insured bank or its affiliate of the employee's spouse, child, parent or sibling, or a member of the employee's immediate household, within 30 days of the commencement of employment of the family members. Generally, employees will not be assigned to any examination, investigation, application or other matter involving the bank or affiliate unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the FDIC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require

disqualification. The following employees are covered by this section: examiners, assessment auditors, attorneys, corporate auditors, liquidators, voting members and designees appointed to any FDIC standing committee, members of the Board, assistants or deputies to the Board or an individual Board member and assistants thereto, division or office heads and the holder(s) of the position(s) immediately subordinate to such division or office heads.

Subpart D—Reports of Indebtedness and Interest in FDIC Decision; Statements of Employment and Financial Interests

§ 336.22 Report of indebtedness.

(a) An examiner, any other employee of the Division of Bank Supervision at or above the grade 11 level, assessment auditor, liquidator, attorney, member of the Board (except the Comptroller of the Currency), assistant or deputy to the Board or an individual Board member (except the Comptroller of the Currency) and any assistant thereto, division or office head and the holder(s) of the position(s) immediately subordinate to such division or office head shall report any extension of credit from an insured bank or its affiliates; *Provided*, That examiners, as well as other employees of the Division of Bank Supervision at or above the grade 11 level, shall also report extensions of credit from noninsured banks and that liquidators and liquidation counsel shall also report extensions of credit from any insured institution. The Ethics Counselor may require any other employee whose position can have an economic impact on an insured bank or its affiliates to make such a report.

(b) Reports shall be on a prescribed form and shall disclose the identity of the creditor and the nature and particulars of the credit. Reports must be made within 30 days of receipt of the proceeds or the employee becoming subject to this reporting requirement, whichever occurs first. In addition, a report must be made by January 31 of each year disclosing all extensions of credit outstanding as of December 31 of the prior year.

(c) (1) Reports required under this section shall be made as follows:

(i) Assessment auditors, liquidators assigned to the Washington office, attorneys, holders of positions immediately subordinate to division and office heads, and any other employee designated by the Ethics Counselor to file reports, to the appropriate director;

(ii) Examiners and Division of Bank Supervision employees at or above the grade 11 level who are assigned to a regional office, to the regional director;

(iii) Regional directors, examiners and Division of Bank Supervision employees at or above the grade 11 level who are assigned to the Washington office, to the Director of the Division of Bank Supervision;

(iv) Liquidators assigned to an area office or a field liquidation office, to the area director;

(v) Members of the Board, assistants or deputies to the Board or individual Board members and assistants thereto, and division and office heads, to the Ethics Counselor; and

(vi) The Ethics Counselor, to the Chairman.

(2) Copies of reports received by appropriate directors, area directors and regional directors shall be immediately forwarded to the Ethics Counselor.

(d) All reports received under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

(e) Regional directors, area directors, appropriate directors, the Ethics Counselor and the Chairman shall review the reports respectively filed therewith to determine whether any extension of credit presents a conflict of interest or the appearance of a conflict of interest with the employee's duties and responsibilities to the FDIC or is otherwise prohibited by this part. In the event it is determined that there is a conflict of interest or the appearance thereof or a violation of this part, the regional director, area director, appropriate director, Ethics Counselor or the Chairman shall resolve the matter. Before acting to resolve the matter, the regional director, area director and the appropriate director shall consult with the Ethics Counselor.

§ 336.23 Report of interest in FDIC decision.

Except for interests reported in accordance with §§ 336.17 and 336.22, an employee with a financial interest (other than a deposit) in a bank or other entity that may be affected by his or her participation in an FDIC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be within 30 days of entrance on duty; within 30 days of acquiring the interest, if acquired subsequent to employment; or within 30 days of the bank or other entity becoming subject to an FDIC decision, if the interest was previously acquired. Reports filed under

this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.24 Statement of employment and financial interest.

(a) *Employees required to file.* Except for those employees who file statements pursuant to § 336.25, the following employees shall file statements of employment and financial interest:

(1) Assistants to assistants or deputies to the Board or individual Board members;

(2) Holder(s) of the position(s) immediately subordinate to a division or office head;

(3) Branch or comparable office heads;

(4) Commissioned bank examiners and any other employees of the Division of Bank Supervision at or above the grade 11 level;

(5) Employees of the Division of Liquidation at or above the grade 11 level;

(6) Assessment auditors at or above the grade 11 level;

(7) Employees of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials and services;

(8) Persons employed by the FDIC as attorneys;

(9) Voting members and designees appointed to any FDIC standing committee;

(10) The Alternate Ethics Counselor and Deputy Ethics Counselor; and

(11) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part or other FDIC regulation. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-Federal enterprise, or other activities where the decision or action has an economic impact on any bank or other enterprise.

(b) *Submission of statements.* (1) Employees shall annually file statements of employment and financial interests with information as of December 31. Statements shall be filed with the Ethics Counselor.

(2) The Ethics Counselor shall notify employees required to file statements of this obligation and provide a copy of the prescribed reporting form no later than

December 15 of each year, with instructions that statements are to be returned after January 1 but not later than January 31.

(3) Employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after entrance on duty or reassignment or promotion (unless the effective date of commencement, reassignment or promotion is after November 30).

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment, reassignment or promotion to a position.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the employee's spouse or dependent child is considered an interest of the employee unless—

(1) the interest is solely the financial interest and responsibility of the spouse or the dependent child and the employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets or activities of the employee; and

(3) The employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to an employee but is known to another person, the employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require an employee to submit on a statement of employment and financial interests any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed business enterprises and are required to be included in an employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed and retained in the office of the Ethics

Counselor, who shall be responsible for maintaining the statements in confidence. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairman or the Director of the Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the Ethics Counselor no later than April 30 following the filing of the statements. The Ethics Counselor may be assisted in his or her review by the Deputy Ethics Counselors.

(2) Whenever a statement or other information indicates a possible conflict between the interest of an employee and the performance of his or her service to the FDIC:

(i) The Ethics Counselor shall investigate the matter and allow the employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of conflict exists; and

(ii) The Ethics Counselor shall attempt to resolve the matter by July 31 following the filing of the statement. If the matter cannot be resolved by July 31, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairman for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 336.25 Financial disclosure reports under the Ethics in Government Act.

Individual Board members, employees at or above the grade 16 level and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the Office of Government Ethics) must file financial disclosure reports (SF 278) in accordance with the requirements of the Ethics in Government Act and regulations of the Office of Government Ethics, 5 CFR Part 734.

Subpart E—Ethical and Other Conduct and Responsibilities of Special FDIC Employees

§ 336.26 Use of FDIC employment.

A special employee shall not use his

or her FDIC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

§ 336.27 Use of inside information.

(a) A special employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his or her part or by counsel, recommendation or suggestion to another person, particularly one with whom he or she has family, business or financial ties. For the purpose of this section, "inside information" means information obtained under FDIC authority which has not become part of the body of public information.

(b) A special employee may teach, lecture or write in a manner not inconsistent with § 336.11 with regard to employees.

§ 336.28 Coercion.

A special employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

§ 336.29. Gifts, entertainment, favors and loans.

(a) Except as provided in paragraph (b) of this section, a special employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the FDIC anything of value as a gift, gratuity, loan, entertainment or favor for himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

(b) Exemptions to paragraph (a) of this section are the same as those authorized to employees under § 336.8.

§ 336.30 Miscellaneous statutory provisions.

Each special employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as a special employee of the FDIC and of the Government. In addition to the statutes cited in the body of the regulations in this part, the attention of each special employee is directed to the statutory provisions listed in § 336.14(d).

§ 336.31 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports:

- (1) All other employment; and
- (2) The financial interests of the special employee which the FDIC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the FDIC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist or medical specialist whose services are procured to provide care and service to patients. Special employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns and individuals paid out of "Imprest Funds" to assist in bank liquidations.

(c) Special employees at or above the grade 16 level shall file financial disclosure reports in accordance with the Ethics in Government Act and regulations of the Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be submitted under this section shall be submitted not later than the time of employment of the special employee. Each special employee shall keep his or her statement current throughout his or her employment with the FDIC by the submission of supplementary statements.

(e) The provisions of § 336.24(c)-(h) shall apply to statements filed under this section.

By order of the Board of Directors this 31st day of October, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-29969 Filed 11-7-83; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE
COMMISSION

17 CFR Part 230

[Release No. 33-6494 File No. S7-998]

Options Material Not Deemed a
ProspectusAGENCY: Securities and Exchange
Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission invites public comment on proposed amendments to Rule 134a under the Securities Act of 1933 relating to options material not deemed a prospectus. The investing public may not be able to understand the nature of newly developed options products if explanatory information is not included in advertisements of those products. The proposed amendments would therefore expand the scope of the rule to permit offerors of options products to include certain explanatory information in advertisements of those products and would modify certain of the conditions to the rule's availability.

DATE: Comments should be submitted on or before December 30, 1983.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-998. All public comments received will be available for inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Alan L. Dye, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to Rule 134a [17 CFR 230.134a] under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 & Supp. V 1981)] as amended by Bus Regulatory Reform Act of 1982, and Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982)]. The proposals are explained in the following sections.

I. The Proposals

In September 1982, the Commission adopted a new registration framework for standardized options.¹ The purpose

of these changes was to make disclosures about standardized options more meaningful to investors and less burdensome to registrants and others.² Concurrently, the Commission adopted a rule that was intended to fit within the new registration framework by permitting the dissemination to investors of educational or instructional written materials about standardized options without such communications being deemed a prospectus.³ The rule was adopted in recognition of the complexity of options trading and the need to remove impediments to those who wish to educate the investing public with respect to such trading.

Although Rule 134a was originally intended to apply only to educational or instructional materials, materials distributed to the public in reliance on the rule have included both educational materials designed to explain to investors the nature of options trading and advertisements promoting particular options products. Since the rule's adoption, newspapers and other media

registration form for standardized options [i.e., Form S-20 [17 CFR 230.20]] and several rules relating to such options [i.e., Rules 153b [17 CFR 230.153b] and 135b [17 CFR 230.135b] under the Securities Act, and Rule 9b-1, [17 CFR 240.9b-1] under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. (1976 & Supp. V 1981), as amended by Act of June 6, 1983, Pub. L. No. 98-36]].

² In February 1979, the Commission published the Report of the Special Study of the Options Market ("Options Study"), which identified several problems relating to options trading within the then existing framework of registration under the Securities Act. *Report of the Special Study of the Options Markets to the Securities and Exchange Commission*, 96th Cong., 1st Sess. at 377-83 (Comm. Print 1978). The Options Study noted that the requirement to provide information on the mechanics and risks of options trading, as well as information about the issuer, made a prospectus lengthy and complicated without necessarily meeting the needs of investors, many of whom lacked the financial skills needed to understand the relatively technical data provided. Moreover, the Options Study found that compliance by the option clearing corporation/issuer with the registration requirements of the Securities Act resulted in substantial costs, due to the need pursuant to Section 10(a)(3) of the Securities Act to revise and redistribute the Form S-1 prospectus annually. The Options Study recommended that information about the issuer should be separate from information concerning options and the trading markets. It recommended that the information with respect to options should be presented in a "readily understandable" manner for a reader without a financial background. See Release No. 33-6411 [June 24, 1982] [47 FR 28688].

³ Rule 134a under the Securities Act [17 CFR 230.134a], Section 2(10)(b) of the Securities Act provides that an advertisement or other communication concerning a security shall not be deemed to be a prospectus if it states from whom a written prospectus can be obtained and does no more than identify the security, state its price and indicate by whom orders will be executed. The section also gives the Commission authority to permit the inclusion of such other information as may be necessary or appropriate in the public interest and for the protection of investors.

of general circulation have carried advertisements of options products which included more than the "tombstone" information permitted by Rule 134 and which identified particular options products. Because options trading is evolving rapidly and many new and complex options products are being offered to the public, the Commission recognizes the unique need for options exchanges to acquaint the investing public with the nature of new standardized options products in advertisements of those products. Accordingly, in recognition of the uniqueness of options trading and options products, the Commission is proposing to make the rule available for such advertisements. The proposed amendments accommodate current industry practice and enable offerors of options products subject to the rule to compete more fairly with offerors of similar products who are not subject to the Commission's jurisdiction.

To qualify under the rule as proposed to be amended, advertisements as well as other written materials would have to satisfy the six conditions specified in the rule. As under Rule 134a as presently in effect, materials published under the amended rule (1) Would have to mention the risks involved in options trading; (2) could not contain past or projected performance figures; (3) could not recommend the purchase or sale of any option contract; (4) would have to contain the name and address of a person from whom a current prospectus could be obtained; and (5) if a definitive options disclosure document existed, would have to contain the name and address of a person from whom a copy of such document could be obtained.

A sixth condition under present Rule 134a prohibits the identification of any specific option class. This condition is intended primarily to reinforce the rule's prohibition against recommendations of particular securities. The Commission believes, however, that the purposes of the Securities Act will not be contravened by the identification in Rule 134a materials of certain options classes (including broadbased stock index options and options on exempt securities), so long as the other conditions of the rule are satisfied. Accordingly, the Commission proposes to revise paragraph (d) of Rule 134a to provide that "[n]o specific security not exempt from registration under the Act, or option on such a security other than an index option," may be identified.

¹ See Release No. 33-6426 (September 16, 1982) [47 FR 41950]. The Commission adopted a new

II. Statutory Authority

The revisions of Rule 134a are being proposed pursuant to Sections 2, 7, 10 and 19(a) of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

III. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

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

1. By revising the introductory text and paragraph (d) of § 230.134a (rule 134a) as follows:

§ 230.134a Options material not deemed a prospectus.

Written materials, including advertisements, relating to standardized options, as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, shall not be deemed to be a prospectus for the purposes of Section 2(10) of the Securities Act of 1933: *Provided*, That such materials are limited to explanatory information describing the general nature of the standardized options markets or one or more strategies: *And, Provided Further*, That:

(d) No specific security not exempt from registration under the Act, or option on such a security other than an index option, is identified:

(Secs. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 210, 48 Stat. 905, 906, 908; secs. 1-4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 306(a)(2), 90 Stat. 57)

By the Commission.

Dated: October 27, 1983.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 134a relating to options material not deemed a prospectus, published in Release No. 33-6494 (October 27, 1983) will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed amendments merely accord those already subject to the rule more flexibility in preparing their advertisements and are not expected to

have a significant impact on a substantial number of small entities.

Dated: November 1, 1983.

John S. R. Shad,

Chairman.

[FR Doc. 83-30141 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1304

Records and Reports of Registrants Changes in Registrant Reporting Requirements

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: In furtherance of the Single Convention on Narcotic Drugs of 1961, the Psychotropic Convention of 1971, and the Psychotropic Substances Act of 1978, DEA plans to amend 21 CFR 1304.38(a) to include reporting requirements for categories of drugs which are listed in Schedules III and IV of the Psychotropic Convention of 1971, and Schedule IV of the Single Convention on Narcotic Drugs of 1961. A proposed amendment to § 1304.39(b) will simplify and reduce the current reporting system and, in an effort to reduce the overall reporting burden on registrants, reporting under § 1304.40 will be discontinued.

DATE: Written comments and objections must be received on or before January 9, 1984.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Alfred A. Russell, Chief, Regulatory Support Section, Office of Diversion Control, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, (202-633-1570).

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping Requirements.

Title 21, Code of Federal Regulations, § 1304.38(a) sets forth a number of categories of controlled substances with respect to which manufacturers are required to make periodic reports. In large measure, these reports are required to satisfy United States

international treaty obligations. The ratification of the Psychotropic Convention of 1971 by the United States has required that some additional categories of controlled substances be included in such reports. It is the intention of the Administration to alter the reporting mechanism so as to produce a net reduction in the volume of data reported. In addition to the reporting mechanism change, the proposed amendment to § 1304.39(b) and 1304.40 will reduce the volume reported.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated to the Acting Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control, the Deputy Assistant Administrator hereby proposes that 21 CFR Part 1304 be amended as follows:

PART 1304—[AMENDED]

1. Section 1304.38 is amended by revising paragraph (a) to read as follows:

§ 1304.38 Reports from manufacturers of bulk materials or dosage units.

Each person who is registered to manufacture controlled substances in bulk or dosage form shall report as follows:

(a) *Substance covered.* Reports shall include data on each controlled substance listed in Schedule I and II, on each narcotic controlled substance listed in Schedules III, IV and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified below:

Schedule III

- (1) Benzphetamine
- (2) Cyclobarbitol
- (3) Glutethimide
- (4) Methylprion
- (5) Phendimetrazine

Schedule IV

- (1) Barbitol
- (2) Diethylpropion (Amfepramone)
- (3) Ethchlorvynol
- (4) Ethinamate
- (5) Lefetamine (SPA)
- (6) Mazindol
- (7) Meprobamate
- (8) Methylphenobarbital
- (9) Phenobarbital
- (10) Phentermine
- (11) Pipradrol

Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled

substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

2. Section 1304.39 is amended by revising paragraph (b) to read as follows:

§ 1304.39 Report from packages and labelers.

(a) * * * *
(b) *Transactions reported.* Reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the Federal Government) and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, sampling, theft, destruction, or seizure by Government agencies). These reports shall be filed every month not later than the 15th day of the month succeeding the month for which it is submitted; except that a registrant may be given permission to file more frequently or less frequently (but not less than quarterly), depending on the number of transactions being reported each time by that registrant.

§ 1304.40 [Removed]

§§ 1304.41 and 1304.42 [Redesignated as § 1304.40 and 1304.41.]

3. Section 1304.40, Reports from importers and exporters, it hereby removed and existing § 1304.41 and 1304.42 are hereby redesignated §§ 1304.40 and 1304.41, respectively.

The Deputy Assistant Administrator hereby certifies that this proposal will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed action effects an overall reduction in registrant reporting requirements.

Pursuant to Sections 3(c)(3) and 3(e)(2)(B) of the Executive Order 12291, this proposed action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

Dated: September 6, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 83-30195 Filed 11-7-83; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. 1

[FHWA Docket No. 83-7, Notice 2]

Acceleration of Projects, Consolidated Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The document extends the period for comments on the advance notice of proposed rulemaking published on August 26, 1983 (48 FR 38854) requesting comments by October 25, 1983 on acceleration of projects. The comment period is being extended to November 25, 1983 in order to provide interested parties additional time to respond to the advance notice of proposed rulemaking.

DATE: Comments will be received until November 25, 1983.

ADDRESS: FHWA Docket No. 83-7, Federal Highway Administration, HCC-10, Room 4205, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Steiner M. Silence, Special Procedures Branch, Federal-Aid Division, (202) 426-0335, or Mr. Edward V. A. Kussy, Assistant Chief Counsel, (202) 426-0791, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday. Copies of reports and memorandums referenced in the Supplementary Information may be obtained from Mr. Silence.

(Sec. 129, Pub. L. 97-424, 96 Stat. 2118; 23 U.S.C. 140, 315; 49 CFR 1.48(b))

Issued on: November 1, 1983.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 83-30173 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-133-78]

Books and Records of Foreign Corporations and Operations; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to books and records of foreign corporations and operations that appeared in the *Federal Register* on January 23, 1981 (46 FR 7401). The notice is being withdrawn because Congress, in the Tax Equity and Fiscal Responsibility Act of 1982, has addressed the problems that were the focus of the proposed regulations.

FOR FURTHER INFORMATION CONTACT: Herman B. Bouma of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR-133-78), 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that appeared in the *Federal Register* on January 23, 1981 (46 FR 7401). The notice proposed amendments to the regulations under sections 482, 984, and 6001 of the Internal Revenue Code of 1954. The principal purpose of the proposed amendments was to aid the Internal Revenue Service in obtaining books and records of foreign corporations and operations. Aware of the problems the Service was experiencing in this area, Congress provided in Subtitle F of Title III of the Tax Equity and Fiscal Responsibility Act of 1982 a series of compliance provisions pertaining to transactions outside the United States or involving foreign persons. Because of these provisions, the regulations proposed on January 23, 1981, are no longer necessary.

Drafting Information

The principal author of this document is Herman B. Bouma of the Legislation

and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 1 relating to books and records of foreign corporations and operations and published in the **Federal Register** on January 23, 1981 (46 FR 7401), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-30211 Filed 11-7-83; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-200-78]

Work Incentive Program Credit, Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the work incentive program (WIN) credit that was published in the **Federal Register** on April 30, 1980 (45 FR 28758). The WIN credit was terminated by section 261(b)(2)(B)(i) of the Economic Recovery Tax Act of 1981 for wages paid or incurred to an employee in any taxable year beginning after December 31, 1981. As a result of this termination, the Internal Revenue Service has decided to withdraw the notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Offices of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3516) (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that appeared in the **Federal Register** on April 30, 1980 (45 FR 28758). That notice of proposed rulemaking contained proposed amendments to the regulations relating to the WIN credit. Several comments were received with respect to the proposed regulations, but no public hearing was requested or held.

Section 261(b)(2)(B)(i) of the Economic Recovery Tax Act of 1981 added section

50B(a)(5) to the Internal Revenue Code of 1954 which terminated the WIN credit for wages paid or incurred to employees in any taxable year beginning after December 31, 1981. However, section 261 of the act also added "eligible work incentive employees" as a new targeted group for which a credit under section 44B is available for later taxable years. (See sections 44B and 51 (d)(1)(H)).

Withdrawal of Notice of Proposed Rulemaking

The notice of proposed rulemaking containing proposed amendments to 26 CFR Part 1 relating to the WIN credit that was published in the **Federal Register** (45 FR 28758) on April 30, 1980, is hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-30212 Filed 11-7-83; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-276-82]

Life Insurance Reserves Computed on a Preliminary Term Basis

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations relating to the election with respect to life insurance reserves computed on a preliminary term basis. The proposed regulations reflect the changes made to the applicable law by the Tax Equity and Fiscal Responsibility Act of 1982, and clarify certain provisions of the existing regulations. The proposed regulations affect all life insurance companies that make the election with respect to life insurance reserves computed on a preliminary term basis, and provide them with the guidance to comply with the law.

DATES: Written comments and request for a public hearing must be delivered by January 9, 1984. Except as otherwise provided, the proposed regulations are proposed to be effective for taxable years beginning after December 31, 1957.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-276-82) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 818(c) of the Internal Revenue Code of 1954. Section 818(c) permits taxpayers classified as life insurance companies under section 801(a), that compute their life insurance reserves on a preliminary term basis, to recompute their reserves under two alternative methods. First, they may use the exact revaluation method, under which they determine the level of reserves that would result if reserves had been computed on a net level premium basis. Alternatively, taxpayers may adjust their reserves in accordance with the approximate revaluation formula specified in section 818(c)(2). The approximate revaluation formula differs depending on whether the reserves are established under contracts that provide for term insurance, or "other than term insurance."

Section 818(c) was amended by section 267 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 550). The amendment revised the approximate revaluation formula specified in section 818(c)(2)(A) with respect to reserves established under contracts that provide for "other than term insurance." The revised formula is effective for taxable years beginning after December 31, 1981, with respect to reserves established under contracts entered into after March 31, 1982.

In addition, it came to the attention of the tax-writing committees that taxpayers were selling life insurance contracts which, in substance, were renewable term insurance contracts, but which taxpayers were characterizing as "other than term insurance." By making this characterization, taxpayers have been treating the reserves established in connection with the policies as reserves eligible for the approximate revaluation formula specified in section 818(c)(2)(A). As a consequence, taxpayers have been claiming deductions solely attributable to section 818(c)(2)(A) of as much as 20 times the first-year premium on the contract. The Report of the Senate Finance Committee discussed the Committee's concern with the reserves deductions being claimed and the Committee's expectation that regulations be issued to deal with this matter. S. Rep. No. 494, 97th Cong., 2d Sess. 341.

The proposed regulations reflect the revision to the approximate revaluation formula by the Tax Equity and Fiscal Responsibility Act of 1982. In addition, the proposed regulations provide

definitions relating to the qualification of reserves established under certain contracts for the approximate revaluation adjustment. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Explanation of the Provisions

For taxable years beginning before December 31, 1981, the approximate revaluation formula provided an increase in reserves of \$21 per \$1,000 of "other than term insurance" in force less 2.1 percent of the reserves under those contracts. The Tax Equity and Fiscal Responsibility Act of 1982 revised that formula to provide an increase in reserves of \$19 per \$1,000 of "other than term insurance" in force less 1.9 percent of the reserves under those contracts. The revised formula is effective for taxable years beginning after December 31, 1981, with respect to reserves under contracts issued after March 31, 1982. In addition, taxpayers are permitted to change from the approximate revaluation to the exact revaluation method for their first taxable year beginning after 1981 without obtaining the consent of the Commissioner. The proposed regulations revise the regulations to reflect these changes.

The proposed regulations also provide rules with respect to the eligibility of reserves under certain contracts for the section 818(c) adjustment. First, the proposed regulations provide that a life insurance contract consisting, in substance, of separate contracts of renewable term of level-premium term insurance and "other than term insurance," will be treated as separate contracts for purposes of section 818(c). Similarly, a life insurance contract consisting, in substance, of more than one contract of "other than term insurance," will be treated as separate contracts for purposes of section 818(c). The separate contracts must qualify as "other than term insurance," or "contracts which at the time of issuance cover a period of more than 15 years" for the reserve under the separate contracts to qualify for the appropriate increase under section 818(c)(2).

The proposed regulations provide that a contract will not be considered a "contract which at the time of issuance covers a period of more than 15 years" if it is, in substance, a contract of renewable term insurance for a series of term periods each of which is 15 years or less. In addition, the proposed regulations provide conditions that must be satisfied for a life insurance contract to qualify as "other than term insurance." Effective for contracts

issued after 30 days after the Treasury decision based on these proposed amendments is published in the *Federal Register*, the proposed regulations provide that the contract must provide for a constant level of death benefits and must endow at the end of a specified period or upon the maturity of the contract in the amount of the death benefit. In addition, the gross premiums charged under the contract must be level throughout the premium paying period unless the contract meets both a cash value and reserve requirement, and provides for level gross premiums by the end of the fifth policy year. Taxpayers are urged to comment on the types of contracts that may be unduly affected by these conditions, and to indicate suggested alternatives to the rules proposed.

Except for the rules proposed under § 1.818-4(h)(2) relating to the conditions that must be satisfied for a contract to qualify as "other than term insurance," the proposed amendments to the regulations with respect to the eligibility of reserves under certain contracts for the section 818(c) adjustment are proposed to be effective for taxable years beginning after December 31, 1957. Although the rules proposed under § 1.818-4(h)(2) relating to the conditions that must be satisfied for a contract to qualify as "other than term insurance" are proposed to be effective for contracts issued after 30 days after the Treasury decision based on these proposed amendments is published in the *Federal Register*, contracts issued before such date that satisfy those conditions would be treated as contracts of "other than term insurance" for purposes of section 818(c).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed

rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Alice M. Bennett 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 on matters of both substance and style.

List of Subjects in 26 CFR 1.801-1—1.832-6

Income taxes, Insurance companies.

Proposed Amendments to the Regulations

PART 1—[AMENDED]

The proposed amendments to 26 CFR are as follows:

Income Tax Regulations

(26 CFR Part 1)

Paragraph. Section 1.818-4 is amended by revising paragraphs (b)(2) and (g) and by adding new paragraph (h). The revised and added provisions read as follows:

§ 1.818-4. Election with respect to life insurance reserves computed on preliminary term basis.

(b) *Revaluation of reserves computed on preliminary term basis.* * * *

(2) *Approximate revaluation method.* The amount computed without regard to section 818(c)—

(i) Increased by \$21 per \$1,000 of insurance in force (other than term insurance) under contracts entered into before April 1, 1982, less 2.1 percent of reserves under such contracts,

(ii) Increased by \$19 per \$1,000 of insurance in force (other than term insurance) under contracts entered into after March 31, 1982, less 1.9 percent of reserves under such contracts, and

(iii) Increased by \$5 per \$1,000 of term insurance in force under such contracts which at the time of issuance cover a period of more than 15 years, less 0.5 percent of reserves under such contracts.

(g) *Special rule for 1958 and 1981.* If an election is made for a taxable year beginning in 1958, or is in effect for a taxable year beginning in 1981, to use the approximate revaluation method described in section 818(c)(2) and paragraph (b)(2) of this section the company may, for its first taxable year beginning after 1958, or for its first taxable year beginning after 1981 with respect to reserves established under contracts entered into after March 31, 1982, elect to change to the exact revaluation method described in section 818(c)(1) and paragraph (b)(1) of this section without obtaining the consent of the Commissioner. In such case, the election to change shall be made in a statement attached to the company's income tax return for such taxable year and filed not later than the date prescribed by law (including extensions thereof) for filing the return for such year. The statement shall indicate that the company has elected to change from the approximate to the exact revaluation method for such taxable year, or for such reserves, and shall include such information and data referred to in paragraph (e) of this section as will enable the Commissioner to determine the correctness and accuracy of the computations involved.

(h) *Eligibility of reserves under certain contracts—*

(1) *Segregation of contracts.* For purposes of this section, a life insurance policy which, in substance, consists of a contract of renewable term or level-premium term insurance and a contract of "other than term insurance" shall be treated as separate contracts. Similarly, a life insurance policy which, in substance, consists of more than one contract of "other than term insurance" shall be treated as separate contracts. Paragraph (b) of this section shall not apply to the reserves under the separate contracts unless those reserves are computed on a preliminary term basis in a manner consistent with the substance of the separate contract. If an election is made under paragraph (b)(2) of this section, the reserves under each separate contract will be eligible for the increase under paragraph (b)(2) (i) or (ii) of this section, whichever is applicable, only if that separate contract satisfies the applicable requirements including the requirement that it represent "other than term insurance" in force. Similarly, the reserves under each separate contract will be eligible for the increase under paragraph (b)(2) (iii) of this section only if that separate contract satisfies the applicable requirements

including the requirement that it represent a "contract which at the time of issuance covers a period of more than 15 years."

(2) *"Other than term insurance."* A life insurance contract issued after 30 days after the Treasury decision based on these proposed amendments is published in the *Federal Register* does not qualify as "other than term insurance" under this section unless it provides for a constant level of death benefits and endows at the end of a specified period or upon the maturity of the contract in an amount equal to the level death benefit. In addition, the gross premiums charged under the contract must be level during the premium paying period unless—

(i) The contract provides for a cash value which at all times is at least 75 percent of the minimum nonforfeiture value required under State law for a contract with the same level death benefit, the same endowment at the expiration of the mortality tables, issued at the same age and providing for level gross premiums,

(ii) The reserves under the contract with respect to the endowment amount computed without regard to section 818(c) equal or exceed the minimum reserve required under State law at all times for a policy with the same level death benefit, the same endowment at the expiration of the mortality tables, issued at the same age and providing for level gross premiums, and

(iii) The gross premiums charged under the contract are level from the end of the fifth policy year throughout the remainder of the premium paying period.

A contract that does not satisfy the requirements of this paragraph (h)(2) at the same time the contract is issued may qualify as "other than term insurance" at the time the requirements are satisfied.

(3) *"Contracts which at the time of issuance cover a period of more than 15 years."* To qualify as a "contract which at the time of issuance covers a period of more than 15 years" under this section, the life insurance contract must not be a contract described in paragraph (h)(2) of this section, or a contract which, in substance, provides for renewable term insurance for a series of term periods each of which is 15 years or less. If one of the term periods is greater than 15 years, any increase with respect to the reserves for that term period shall not be made before the

insurance provided with respect to that term period is in force.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.
[FR Doc. 83-30213 Filed 11-7-83; 8:45 am]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

(Notice No. 492)

Non-Generic Designations of Distinctive Types of Grape Wine Having Geographical Significance

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of request for comment.

SUMMARY: ATF is issuing this notice for two purposes: (a) To notify all interested persons that ATF is commencing a decision-making process to expand the list of non-generic wine designations currently referenced in 27 CFR 4.24(c); and, (b) to request that all interested national governments submit to ATF for review a list of those wine designations, in alphabetical order, which they wish to be deemed non-generic. This list shall be limited to those designations which the appropriate national governments officially restrict only to their own wines produced subject to specific national requirements and having characteristics which distinguish them from all other wines. Additionally, this list shall identify the delimited geographic region associated with each wine designation and shall set forth the specifications each wine must meet to qualify for the designation under the laws and regulations of the appropriate national government.

ATF will use the information presented in the submitted lists as the principal, but not the sole, basis for the decision-making process.

DATE: The list of designations of wines must be received on or before May 7, 1984.

ADDRESS: The lists should be addressed to: Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington DC 20044-0385 (Notice No. 492).

FOR FURTHER INFORMATION CONTACT: Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202) 535-6245.

SUPPLEMENTARY INFORMATION: Background

Numerous foreign countries, including several Member States of the European Economic Community, have long sought ATF recognition of the non-generic wine designations which, in their view, denote their distinctive national products.

The wine labeling regulations in 27 CFR Part 4 provide for the use of designations having geographic significance. By geographic significance, ATF means that the designation is associated with wine produced in a specific geographic area. This regulation was promulgated in 1938 and has remained virtually unchanged since that date. The designations are divided into three categories: generic, semi-generic, and non-generic. The lists of designations in 27 CFR 4.24 are not exhaustive but are only examples of each type of designation.

Generic designations, such as *Vermouth*, are designations of specific kinds of wine which once had, but no longer have geographic significance. For example, a wine may be labeled "*Vermouth*" regardless of the place of origin of the wine.

Semi-generic designations, such as *Chablis* and *Chianti*, are class and type designations which retain some geographic significance to consumers. Therefore, to ensure the consumer is not misled, and appellation of origin must always appear with semi-generic designations when the wine is of an origin other than that associated with the designation. For example, a wine labeled "*Burgundy*" must bear an appellation of origin if it is not from the Burgundy region of France.

Non-generic designations have specific geographic significance and are indicative of specific kinds of wine distinguishable from all others. Non-generic designations may appear only on labels of wines produced in the geographic area associated with the designation. For example, "*Deidesheimer*" and "*Lacryma Christi*" may only be used on wines from Germany and Italy, respectively, which qualify to bear these designations.

Non-Generic Status

ATF is prepared to expand the list of non-generic designations in 27 CFR 4.24(c) and hereby requests all interested national governments to submit lists of the wine designations they wish to be deemed non-generic. These lists must be accompanied by information to support such classifications. Although this documentation is essential to the expansion process, it will not be the sole

basis for determining non-generic status. After the review of all submissions, ATF intends to issue a notice of proposed rulemaking as to the designations ATF believes should be deemed to be non-generic and may hold public hearings on any designations which may be either misleading or claimed, in identical or similar form, by more than one country.

At the conclusion of the decision-making process, ATF will issue a notice of all designations deemed to be non-generic.

We anticipate the final effect of this action will be a considerably expanded list of non-generic wine designations, the use of which ATF will restrict to qualifying wines imported into the United States.

Submission of Information

Other than the list of the distinctive designations of wine, which should be submitted in alphabetical order, ATF requests specific information relating to the designations. The list and information can only be submitted by national governments. The applicable laws and regulations of the country of origin governing the composition, method of production, and designation of the wines should be included in the submission. Any other information to support non-generic status, such as the length of time the designation has been in use and/or officially recognized by the country of origin is also requested. If the national government is aware of controversies surrounding any designation, this should also be noted and any background material pertaining to any controversy should be submitted to ATF for review and consideration.

In order to facilitate review of the submissions, ATF requests that all information and documentation be submitted in the English language.

Disclosure

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

All the lists and any background material accompanying any list will be available for public inspection during business hours at: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW, Washington, DC.

Signed: September 21, 1983.

Stephen E. Higgins,

Director.

Approved: October 25, 1983.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

(FR Doc. 83-30134 Filed 11-7-83; 8:45 am)

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Public Comment and Opportunity for Public Hearing on Modified Portions of the Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: Notice of receipt of permanent program modifications: Public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the Montana permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments submitted by Montana for the Director's approval on September 13, 1983, include modifications to statutory provisions concerning the following: (1) Submission of annual reports by permittees, (2) issuance of permits to operators with a history of violations, (3) assessment of civil penalties for all violations.

DATE: Written comments must be received on or before 4:00 p.m. December 8, 1983 to be considered in the Director's decision to approve or disapprove the proposed amendments.

A public hearing on the proposed modifications has been scheduled for November 14, 1983, at the address listed below under "ADDRESSES". Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the address below by November 7, 1983. If no person has contacted Mr. Thomas by this date to express an interest in this hearing, the hearing will be cancelled. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing will be held at the OSM Casper Field Office, Freden Building, 935 Pendell Boulevard, Mills, Wyoming.

Written comments should be mailed or hand-delivered to Mr. William Thomas, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644.

Copies of the proposed modifications to the Montana program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Headquarters Office, the OSM Casper Field Office and the Office of the State Regulatory Authority, all listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 "L" Street, N.W., Washington, D.C. 202040

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644

Montana Department of State Lands, Reclamation Division, Capitol Station, Helena, Montana 59620

FOR FURTHER INFORMATION CONTACT:

Mr. William Thomas, Field Office Director, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: The Montana program was conditionally approved by the Secretary on April 1, 1980. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Montana program can be found in the April 1, 1980 *Federal Register* (45 FR 21560) and the February 11, 1982 *Federal Register* (47 FR 6266).

Pursuant to OSM's regulations at 30 CFR 732.17(b)(3), Montana notified OSM by letter dated September 13, 1983, that the Montana Legislature had adopted three changes in the Montana Strip and Underground Mine Reclamation Act.

The changes are described below:

(1) Chapter 68, Laws of 1983, amends Section 83-4-237, MCA, to allow an operator who has more than one permit to file with the regulatory authority one annual report for all permits rather than an annual report for each permit.

(2) Chapter 162, Laws of 1983, amends Section 82-4-251(4) by eliminating the following language: "The Department may not issue any additional permits to an operator who has repeatedly been in

non-compliance or violation of this part." The State has advised OSM that the eliminated language was superfluous as Sections 82-4-227(11) and (12) of the State statute prohibit issuance of a permit to an operator with a history of violations consistent with Section 510(c) of SMCRA.

(3) Chapter 499, Laws of 1983, amends Section 82-4-254 of Montana's statute to allow the Department of State Lands (DSL) to waive civil penalties on minor violations if the Department determines that the violation is not of potential harm to public health, safety or the environment or does not impair administration of the Act. The Department cannot implement this provision until it establishes rules to prescribe specific criteria to be used in determining whether or not a violation poses potential harm to the public health, public safety or the environment or threatens to impair administration of the Strip and Underground Mine Reclamation Act. The rules must also establish a procedure for the issuance of waivers which must include a requirement that the Department of State Lands give notice of the violation and waiver to the permittee and place such notice in the permittee's file kept by the Department.

OSM is seeking comment on the adequacy of these provisions in satisfying OSM's criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. The full text of the changes adopted by the State is available for public review at the addresses listed above.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it

would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95-87, 30 U.S.C. 1253)

Dated: October 27, 1983.

James R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-30175 Filed 11-7-83; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 942

Public Comment and Opportunity for Public Hearing on Proposed Modifications of the Tennessee Permanent Regulatory Program and Proposed Modification of the Deadline for Tennessee To Satisfy a Condition of Program Approval

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on the following: (1) The adequacy of proposed amendments to the Tennessee permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and (2) the proposal to extend the deadline for the State to satisfy condition (a) of the Secretary's approval of the State program concerning State laws which conflict with SMCRA. The proposed amendments submitted by Tennessee for OSM's approval include: (a) Modifications intended to satisfy condition (k) of the Secretary's approval of the Tennessee program concerning procedures for hearings and appeals and (b) amendments to the State regulations pertaining to blaster training and certification and performance standards for coal tipples, preparation plants and support facilities.

DATE: Written comments must be received on or before 4:00 p.m. on December 8, 1983 to be considered in the Secretary's decision to approve or disapprove the proposed amendments.

A public hearing on the proposed modifications has been scheduled for 7:00 p.m. on November 14, 1983, at the

address listed below under "ADDRESSES". Any person interested in making an oral or written presentation at the hearing should contact Mr. James Curry at the address below by November 7, 1983. If no person has contacted Mr. Curry by this date to express an interest in participating in this hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the *Federal Register*. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing will be held at the TVA Office Complex, Plaza West Towers, Room C-36, 400 West Summit Hill Drive, Knoxville, Tennessee.

Written comments should be mailed or hand-delivered to Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 400, Knoxville, Tennessee.

Copies of the proposed modifications to the Tennessee program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Headquarters Office, the OSM Knoxville Field Office and the Office of the State Regulatory Authority, all listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 "L" Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Field Office, 530 Gay Street, S.W., Suite 400, Knoxville, Tennessee

Tennessee Department of Public Health and Environment, Division of Surface Mining and Reclamation, 305 W. Springdale Avenue, Knoxville, Tennessee 37917

FOR FURTHER INFORMATION CONTACT: Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 400, Knoxville, Tennessee.

SUPPLEMENTARY INFORMATION: The Tennessee program was conditionally approved by the Secretary on August 10, 1982 (47 FR 34724-34754). The approval was conditioned on the State's correction of 11 minor deficiencies in its program.

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the

disposition of comments and explanation of the conditions of approval of the Tennessee program can be found in the August 10, 1982 *Federal Register* (47 FR 34724-34754).

Proposed Amendments.

On September 30, 1983, Tennessee submitted for OSM's approval a program amendment intended to satisfy condition (k) of the Secretary's approval of the State program as well as two program amendments not related to conditions of approval.

Following is a description of the amendments submitted by the State:

(1) In satisfaction of condition (k) of the Secretary's approval of the State program, Tennessee submitted a policy statement to clarify that the Tennessee program includes provision which are consistent with the Federal standards at 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280, and 4.1281.

Condition (k) stipulates that Tennessee must submit promulgated regulations, a policy statement, an Attorney General's opinion or other proof that the State program is no less effective than the Federal standards cited above. The policy statement submitted by the State covers the following areas:

- determination of eligibility of persons to practice before administrative law judges;
- adherence to the Code of Judicial Conduct by administrative law judges;
- right to review of the granting or denial of a waiver of the formula for determining civil penalty amount;
- operator's right to appeal a Notice of Violation (NOV) during a civil penalty proceeding;
- content requirements for the Division of Surface Mining's (DSM) answer to an appeal regarding small operators' exemption from performance standards;
- right to appeal of adversely affected persons.

OSM is seeking comment on the adequacy of the policy statement submitted by the State in satisfying condition (k).

(2) Tennessee also submitted for the Director's approval proposed regulations which establish requirements for the training and certification of blasters working in coal mines in Tennessee. The new requirements are set forth under proposed Chapter 0400-1-23 of Tennessee's program regulations.

At the time of the Secretary's approval of Tennessee program, OSM had not yet promulgated rules governing the training and certification of blasters. Hence, the State was not required to

include such requirements in its program. However, in his notice announcing conditional approval of Tennessee's program, the Secretary specified that Tennessee would be required to adopt such provisions following promulgation of the Federal standards (47 FR 34731, August 10, 1982).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). OSM is seeking comment on whether Tennessee's proposed rules under Chapter 0400-1-23 are consistent with, and meet the requirements of, the revised Federal standards and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

(3) A third amendment submitted by the State sets forth proposed special performance standards for coal tipples at or near the minesite and preparation plants and support facilities not within the permit area for a mine. The proposed standards, if adopted, would replace the existing requirements under Rule 0400-1-21 of Tennessee's approved program. Also submitted by the State for OSM's approval were proposed definitions for "coal preparation plant", "coal preparation waste" and "coal tipples" to replace the existing definitions for those terms at Rule 0400-1-1-.03 subparagraphs (m), (n) and (o). Tennessee submitted proposed new definitions for "support facilities" and "transfer station" under Rule 0400-1-1-.03 subparagraphs (ssss) and (tttt).

OSM is seeking comment on the adequacy of the proposed changes in satisfying the criteria for State program amendments at 30 CFR 732.15 and 732.17. OSM issued revised Federal regulations at 30 CFR Parts 700, 701, 785, 816, 817 and 827 pertaining to support facilities and coal preparation plants on May 5, 1983 (48 FR 20392). The revised Federal regulations are the standard for approval of Tennessee's proposed amendments.

The program modifications submitted by Tennessee for OSM's consideration are available in full text for public review at the addresses listed above under "ADDRESSES".

Proposed Extension

On September 30, 1983, the Director, DSM, advised OSM that the State would be unable to submit the materials to satisfy condition (a) of the Secretary's approval of Tennessee's program by the September 30, 1983, deadline. Hence, the State requested an extension of the

deadline for the State to meet this condition until December 30, 1983.

Condition (a) stipulates that Tennessee must submit copies of the bonding laws and procedures referred to in Chapter III of the Tennessee program, the Tennessee Safe Dams Act and an opinion from Tennessee's Attorney General that these laws and the Tennessee Uniform Administrative Procedures Act are superseded by SMCRA to the extent they are inconsistent with SMCRA.

DSM has indicated that it has not yet been able to obtain the Attorney General's opinion needed to satisfy this condition. In accordance with the State's request, OSM is proposing an extension of the deadline for the State to meet condition (a) until December 31, 1983, in order to allow DSM sufficient time to secure the opinion from the State Attorney General. OSM solicits comment on this proposal to extend the deadline.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: (Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: October 27, 1983.

James R. Harris,
Director, Office of Surface Mining.

[FR Doc. 83-30176 Filed 11-7-83; 8:45 am]

BILLING CODE 4310-05-M

POSTAL RATE COMMISSION

[Docket No. RM84-1]

39 CFR Part 3001

Scheduling of Public Conferences; Classification of Commission's Authority

November 2, 1983.

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal is intended to clarify the Commission's authority in formal proceedings to schedule public technical conferences. A new provision, 39 CFR 3001.24a would be added to specify the purpose and scope of such conferences. The Commission has a positive responsibility to assure that its decisions are based on complete, understandable evidence. Technical conferences are a means of enabling the Commission to fulfill this responsibility. The proposed rule will resolve any misunderstandings concerning the authority for, and functions of, prehearing conferences.

DATE: Comments on the proposed amendments set forth in this notice should be filed by December 8, 1983.

ADDRESSES: Comments and correspondence relating to this notice should be sent to Charles L. Clapp, Secretary of the Commission, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254-3880).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Assistant General Counsel, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254-3836).

SUPPLEMENTARY INFORMATION: The Postal Rate Commission proposes to add a provision to its Rules of Practice and Procedure, 39 CFR 3001. *et seq.*, which states the purposes and circumstances under which prehearing technical conferences are proper. The proposed rule will resolve any misunderstandings concerning the authority for, and functions of, prehearing technical conferences. It states that the purpose of the prehearing technical conference is to clarify and supplement information which must be provided to the Commission pursuant to existing rules 39 CFR 3001.54(p), 3001.64(g), or 3001.92(l), which require parties to provide workpapers to explain

testimony and exhibits submitted in Commission proceedings. If a party fails to provide adequate supporting workpapers, the Commission, as well as other interested persons, is hampered in its ability to develop timely recommended decisions which reflect relevant record evidence.

The Commission frequently has a limited time to perform its functions, which in many instances are subject to a statutory 10 month time deadline, 39 U.S.C. 3624. When timely supporting explanatory information is not provided as required by the Commission's rules, it is important that the Commission obtain the necessary information as quickly and conveniently as possible. The Commission has a positive responsibility to assure that its decisions are based on complete, understandable evidence. Technical conferences are a means of enabling the Commission to fulfill this responsibility. Existing rule 24 (39 CFR 3001.24) provides a detailed description of matters which may be pursued at technical conferences, including "appropriate explanation, clarification or amendment of any proposal, filing, evidence * * *." Thus the Commission is of the opinion that its rules currently authorize holding prehearing technical conferences when circumstances warrant.

However, in Docket R83-1 the United States Postal Service filed a notice with the Commission less than 48 hours before a scheduled prehearing technical conference, in which it expressed the view that such a technical conference was not authorized by the Commission's rules, and that it would impose an unnecessary burden on Postal Service witnesses.¹ The Postal Service also objected because the Commission and its staff would be able to attend, and participate in the conference. The Postal Service suggested that these issues could be discussed through notice and comment rulemaking.

The Commission believes that under certain circumstances prehearing technical conferences are a useful tool to expedite Commission decisions, which are often subject to short time limits. In particular, the Commission believes it, as well as any interested member of the public who participates in its proceedings, must immediately be

¹ Commission Order No. 498, issued May 13, 1983, scheduled the prehearing technical conference in Docket No. R83-1. The purpose of this conference was to clarify testimony and exhibits filed by the Postal Service with its request which were not supported by complete workpapers as is required by Commission rules, 39 CFR Part 3001, and especially §§ 301.54(p), 3001.64(g).

able to trace the derivation of numbers used in testimony and exhibits to their primary sources, in order to understand and analyze that testimony. When adequate workpapers are not filed with testimony and exhibits, technical conferences are likely to lessen delays in the proceeding which would result from utilizing more protracted discovery procedures to obtain adequate explanations of this material.

This rulemaking will allow interested persons to comment on the potential benefits or problems of prehearing technical conferences, and on whether such conferences would be contrary to procedural fairness or accepted standards of fairness in administrative hearings, as was suggested by Postal Service in Docket No. R83-1.

Impact of Proposed Changes

Pursuant to Executive Order 12291, the Commission finds that the Proposed rule changes do not constitute a "major rule." The changes deal with procedural matters and it is not anticipated that they could result in an appreciable change in the costs of participating in these cases. Nor will the changes have any adverse effects on competition, employment or the other factors listed in E.O. 12291.

The above analysis that the proposed rule changes do not constitute a major rule for purposes of E.O. 12291, applies with equal force to the Regulatory Flexibility Act. However, we would welcome comments as to whether the rule could have a significant economic impact on a substantial number of small entities, as well as suggestions as to how to minimize any such impact.

List of Subjects in 39 CFR 3001

Administrative practice and procedure.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

List of Proposed Changes

§ 3001.24 [Amended]

1. Section 3001.24(c) is amended to add "and (e)" after the words "paragraph (d)" in the first sentence.

2. Section 3001.24 is amended by redesignating paragraph (e) as paragraph (f) and by adding a new paragraph (e) to read as follows:

§ 3001.24 Prehearing conferences.

(e) *Prehearing Technical Conferences.* In any proceeding the Commission or the presiding officer may, with or

without motion, upon due notice as to subject matter, time, and place, direct participants to appear for a prehearing technical conference for the purpose of clarifying and supplementing information provided pursuant to §§ 3001.54(p), 3001.64(g), or 3001.92(l). Such technical conferences shall be for the limited purpose of ascertaining how witnesses arrived at factual and technical conclusions contained in their testimony.

(39 U.S.C. 3624(b)(2))

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 83-30171 Filed 11-7-83; 8:46 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2463-8]

Approval and Promulgation of Implementation Plans; California Architectural Coating Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The State of California has submitted to EPA amendments to rules controlling volatile organic compound (VOC) emissions from architectural coating. This notice proposes to approve the rule revisions and incorporate them into the State Implementation Plan (SIP) as they represent reasonably available control technology (RACT). The intended effect of these revisions is to control VOC emissions and to meet requirements of the Clean Air Act.

DATES: Comments may be submitted up to December 8, 1983.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Programs Branch, State Implementation Plan Section (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions and EPA's associated Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address, and at the following location: California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air

Programs Branch, Air Management Division, Environmental Protection Agency, Region 9 (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act requires states to revise their State Implementation Plan for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). Several California air pollution control districts adopted "technology forcing" rules governing VOC emissions from architectural coating operations as part of their plan to provide for attainment of the ozone NAAQS.

The California architectural coating rules are designed to reduce VOC emissions by limiting the amount of VOC in a given amount of coating and paint, usually expressed as grams per liter or pounds per gallon. Such compounds are the solvents, or carriers of the paint pigments which actually produce the coated surface of the product. However, the VOC "carrier" evaporates during drying and in the atmosphere reacts with nitrogen dioxide and sunlight to form ozone.

There has been significant attention and effort devoted to the architectural coating emission control strategy since the California Air Resources Board (ARB) adopted the model rule in 1976. The Districts' rules have been amended several times to adjust the VOC limits. This is in part due to the fact that at the time of the ARB adoption, there were a number of unanswered questions and unresolved issues related to the availability of the technology and the actual emission reductions achieved through its implementation. Some of these questions and issues remain unresolved today. As a result, an Architectural Coatings Task Force (ACTF) was formed composed of members from the architectural coating industry, the Districts and the ARB. The ACTF has recommended an interim limit of 380 grams (VOC) per liter for nonflat coatings and is evaluating the performance of waterborne nonflat coatings which comply with the 250 grams per liter final limit.

In a parallel effort, the statewide Technical Review Group for Suggested Control Measures (TRG) composed of members from the Districts, ARB and EPA has been reviewing architectural coating issues, including the available technology for the 1983 VOC limits. As a result, the TRG recently recommended changes to the rule including: Redefining the exempt categories; a 380 grams per liter limits on nonflats until the ACTF

completes its work; and interim and final limits for a number of exempt specialty coatings.

Description and Evaluation of Regulations

The State of California submitted revisions to the following regulations on the indicated dates:

(February 3, 1983 submittals)

Bay Area Air Quality Management District

Rule 3 Architectural Coatings
Fresno County Air Pollution Control District (APCD)

409.1 Architectural Coatings
Imperial County APCD

Rule 424 Architectural Coatings
Ventura County APCD

Rule 74.2 Architectural Coatings

(April 11, 1983 submittals)

El Dorado County APCD

Rule 215 Architectural Coatings
Rule 216 Exemptions
Rule 217 Identification of Coatings

Kings County APCD
Rule 410.1 Architectural Coatings

Madera County APCD
Rule 409 Architectural Coatings

(July 19, 1983 submittals)

Kern County APCD

Rule 410.1 Architectural Coatings
Merced County APCD

Rule 409.1 Architectural Coatings
Monterey Bay Unified APCD

Rule 426 Architectural Coatings
Placer County APCD (Mountain

Counties Air Basin portion of)
Rule 218 Architectural Coatings

These rules are approvable since they are at least as stringent as the TRG recommendations and, thus, represent RACT. A more detailed evaluation of these rules is available at the EPA Region 9 office.

Proposed Actions

The rule revisions represent RACT. Therefore, EPA proposes to approve under Part D the rules listed above since they are consistent with the Clean Air Act, EPA policy and 40 CFR Part 51.

I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: Secs. 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).

Dated: September 9, 1983.

John Wiser,

Acting Regional Administrator,

[FR Doc. 83-29677 Filed 11-7-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FL-010; A-4-FRL 2466-6]

Approval and Promulgation of Implementation Plans; Florida; TSP Variance for Jacksonville Kraft Paper Company

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Florida Department of Environmental Regulation (DER) has submitted for EPA's approval as a State Implementation Plan (SIP) revision a variance for Jacksonville Kraft Paper Company (formerly St. Regis Paper Company) of Jacksonville, Florida. The revision allows the source until September 15, 1985 to achieve compliance with the reasonably available control technology (RACT) rule for particulate matter. Since neither the prevention of significant air quality deterioration (PSD) increments nor the national ambient air quality standards (NAAQS) will be violated and there is only a minor influence on the secondary nonattainment area, EPA proposes to approve the revision.

DATE: To be considered, comments must be submitted on or before December 8, 1983.

ADDRESSES: Written comments should be addressed to Barry Gilbert of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

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

Florida Department of Environmental
Regulation, Bureau of Air Quality
Management, Twin Towers Office
Building, 2600 Blair Stone Road,
Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT:
Barry Gilbert, EPA Region IV, Air
Management Branch, at the above listed
address and phone 404/881-3286 or FTS
257-3286.

SUPPLEMENTARY INFORMATION:
Jacksonville Kraft Paper Company has

always been located in a particulate attainment area, but is in the area of influence of the Jacksonville secondary particulate nonattainment area. The designated nonattainment area was reduced in size in the November 18, 1982, Federal Register, effective January 17, 1983.

DER RACT rules were adopted on January 21, 1981, and were submitted to EPA on February 27, 1981. The control strategy for Jacksonville was submitted on March 16, 1982. EPA proposed approval on September 24, 1982 and published the final notice approving the SIP on May 2, 1983 (48 FR 19715). The secondary attainment date for the area is July 31, 1986, in the control strategy.

Jacksonville Kraft Paper Co. has three power boilers which are rated 185, 246, and 246 MMBTU/hr, burn #6 oil with 2.27% sulfur and have no control equipment. These boilers are out of compliance with the DER rule Florida Administrative Code (FAC) 17-2.650(2)(c)2, Particulate Matter, Specific RACT Emission Limiting Standards for Stationary Sources, Fossil Fuel Steam Generators, of 0.10 pounds of particulates/million BTU (lb.). DER regulation FAC 17-2.650(2)(f) requires compliance schedules for sources not in compliance. Such schedules are to be as expeditious as practicable.

On July 11, 1983, DER held a hearing to solicit public comments on the proposed revision to DER rule FAC 17-2.650(2)(c)2 for Jacksonville Kraft Paper Co. On August 18, 1983, DER adopted the variance and submitted (on September 2, 1983) the variance as a SIP revision to EPA for approval.

The revision will allow the source to emit 0.19 lb. until September 15, 1985, when it must meet the 0.10 lb limit in DER rule FAC 17-2.650(2)(c)2. A compliance schedule is included which has increments of progress during the last six months prior to September 15, 1985, for obtaining a fuel which will meet 0.10 lb. or DER approved control equipment.

DER has shown that the PSD increments will not be violated by this SIP revision. Information provided by DER shows that there has not been an increase in actual particulate or SO₂ emissions since the PSD baseline was triggered on December 27, 1977. Therefore, the PSD increments are not being consumed.

The atmospheric dispersion modeling of Jacksonville Kraft Paper Company and other sources impacting the area shows the NAAQS will continue to be attained in the attainment area. The dispersion models (CRSTER and ISCST) predict concentrations of 48 and 105

μm^3 for the annual and 24-hour periods, respectively. The NAAQS are 75 and $150\mu\text{m}^3$ for the annual and 24-hour periods, respectively. This revision is predicted to have less than a $16\mu\text{m}^3$ 24-hour impact in the area near the plant. Past ambient monitoring in the vicinity of the plant shows attainment of the NAAQS. The predicted impact on the secondary nonattainment area approximately 7 kilometers away is $1\mu\text{m}^3$ for the 24-hour average. This can be considered a minor impact.

The Clean Air Act requires attainment within a reasonable time. EPA regulations, 40 CFR 51.13, Control strategy: Sulfur oxides and particulate matter, states in part:

(b)(1) In any region where the degree of emission reduction necessary for attainment and maintenance of a secondary standard for sulfur oxides or particulate matter can be achieved through the application of reasonably available control technology, "reasonable time" for attainment of such secondary standard, pursuant to § 51.10(c), shall be not more than 3 years unless the State shows that good cause exists for postponing application of such control technology.

(2) In any region where application of reasonably available control technology will not be sufficient for attainment and maintenance of such secondary standard, or where the State shows that good cause exists for postponing the application of such control technology, "reasonable time" shall depend on the degree of emission reduction needed for attainment of such secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment and maintenance of such secondary standard. The State should also indicate that other less costly means of control are not available to the industry.

The State has shown that good cause exists for postponing application of such control technology and that the influence on the secondary nonattainment area is minor.

Action: EPA has reviewed the submitted material and found it to meet EPA requirements. Therefore, EPA is today proposing to approve the State submittal and is soliciting public comment on the regulation.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control.
Intergovernmental relations. Ozone.

Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: September 27, 1983.

Charles R. Jeter,

Regional Administrator.

(FR Doc. 83-30165 Filed 11-7-83; 8:45 am)

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1147; FCC 83-482]

Long-Run Regulation of AT&T's Basic Domestic Interstate Services

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document looks into the appropriate long-run regulation of AT&T's basic interstate services under the policies of the Communications Act of 1934 and the statutory obligations of this Commission. This proceeding is intended to look into the future and begin public policy discussion on regulatory practices regarding AT&T which will serve the public interest.

DATES: Comments in this proceeding are due by February 1, 1984 and replies by March 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Warren G. Lavey, Common Carrier Bureau, (202) 632-6910.

Notice of Inquiry

In the matter of long-run regulation of AT&T's Basic Domestic Interstate Services (CC Docket No. 83-1147).

Adopted: October 19, 1983.

Released: October 27, 1983.

By the Commission.

I. Introduction

1. We hereby give Notice of Inquiry into the appropriate long-run regulation of AT&T's basic interstate services under the policies of the Communications Act of 1934 and the statutory obligations of this Commission. This proceeding is intended to look into the future and begin the public policy discussion on regulatory practices regarding AT&T which will serve the public interest. No immediate deregulatory actions will be ordered in this proceeding. In light of the major changes which have occurred in the telecommunications industry, the

Commission would be remiss merely to assume that the existing policies and practices for regulating AT&T will continue to promote the public interest for the indefinite future. Accordingly, we are interested in obtaining information and analysis in four areas: (1) Costs and benefits of continuing the present regulatory scrutiny of AT&T through 1990; (2) possible options for reduced regulation of AT&T; (3) under what conditions we might pursue each option; and (4) how to assess AT&T's future market power. Because of the unique factors affecting international communications services, this Inquiry is limited to AT&T's domestic interstate operations. This Notice will explain the Commission's motivations for this Inquiry and describe topics for comments.

2. This Notice grows out of three sets of concerns. First, there have been fundamental changes in the telecommunications marketplace calling into question the desirability of continuing present regulatory approaches to AT&T in the future. Additional changes are imminent. Among the major changes are divestiture of AT&T's interexchange services from the Bell Operating Companies' exchange operations accomplished by the Modified Final Judgment (MFJ) in *United States v. AT&T*; growth of the interstate facilities of terrestrial and satellite carriers in competition with AT&T; growth of resellers; and development of nondiscriminatory access charges and interconnections for interexchange carriers to exchange facilities under our decision in *MTS/WATS Market Structure*⁴ and the MFJ. Competitive

¹ 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 103 S. Ct. 1240 (1983). The MFJ modified the 1956 consent decree between the United States and AT&T, *United States v. Western Elec. Co.*, 1956 Trade Cas. (CCH) para. 68,246 (D.N.J., 1956).

² See, e.g., *Allocations of Frequencies in the Bands Above 890 Mc*, 27 FCC 359 (1959); *Specialized Common Carrier Services*, 29 FCC 2d 670 (1971), *aff'd sub nom. Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); *Domestic Communications Satellite Facilities*, 35 FCC 2d 644 (1972); *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978) (Executet I); *MCI Telecommunications Corp. v. FCC*, 580 F.2d 590 (D.C. Cir.), *cert. denied*, 438 U.S. 980 (1978) (Executet II); *Orbit Deployment Plan*, 64 FCC 2d 584 (1981); *Domestic Fixed-Satellite Transponder Sales*, 90 FCC 2d 1238 (1982); *Assignment of Orbital Locations to Stations on the Domestic Fixed-Satellite Service*, FCC 83-188 (released Aug. 12, 1983).

³ See, e.g., *Resale and Shared use*, 60 FCC 2d 261 (1976), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 895 (1978); *Resale and shared use of Domestic Public Switched Network Services*, 83 FCC 167 (1980).

⁴ 48 F.R. 10319 (1983), *reconsid.* FCC 83-365 (released Aug. 22, 1983).

developments already have generated substantial regulatory changes, including *Second Computer Inquiry*⁵ and *Competitive Carrier Rulemaking*.⁶ These decisions involve judgments by this Commission that, where effective competition will promote the purposes of the Communications Act, detailed regulatory scrutiny of rates and facilities is not required by the provisions or policies of the Act. Under *Second Computer Inquiry*, AT&T can provide enhanced services and customer premises equipment on an unregulated basis through a separate subsidiary. AT&T has repeatedly requested that the Commission streamline regulation of, or forbear from regulating, some of its services based on the competition it faces.⁷ This Inquiry explores whether the domestic, interstate telecommunications marketplace warrants, or soon may warrant, a new long-range direction for reduced regulation of AT&T's basic⁸ interstate services under the Act.

3. Second, continuing the present level of regulatory scrutiny of AT&T may cause the Commission to address several difficult matters in the near future. These matters include revision of the interim cost allocation manual;⁹ prescription of a new authorized rate of return on AT&T's regulated interstate services;¹⁰ findings of the lawfulness of

AT&T's private line rate structures;¹¹ and, possibly, examination of any changes in MTS rate structures AT&T may file. Inquiry into the appropriate long-range direction for regulation of AT&T and market forces will assist the Commission in deciding how to handle these matters. Even if no change in the direction for regulation of AT&T would promote the purposes of the Communications Act over the next few years, it may be that other regulatory tools and procedures would benefit consumers more than those presently used. As described *infra*, we revised our regulatory practices as we developed improved methods of analyzing and processing AT&T's filings and as the possible regulatory problems related to AT&T's filings and conduct changed. Yet, we have not undertaken a systematic analysis of alternative regulatory practices. Inquiry into such alternatives may help us to make the present regulatory scrutiny of AT&T more efficient.

4. A third concern is that the Commission may lack the necessary information, and procedures for gathering this information, to decide whether a change in its regulation of AT&T at a given time would promote the public interest.¹² We are unsure about what information we need to make this decision, how we should obtain it, and how we should analyze it. We hope that this Inquiry will help us identify alternative regulatory tools and reduced regulatory approaches, and help us assess their possible costs and benefits. However, to reach a decision we will require actual data on market conditions, the effects of AT&T's rates and conduct, and the effects of our practices. This Inquiry should improve our ability to conduct informed decision making in this area.

5. This Notice seeks to obtain information and analysis of possible future problems and options facing the Commission. It does not propose changes of any rules or policies. However, the record developed in this Inquiry will be used to facilitate the formulation of proposed rules. Comments that are specific in their analysis will be most useful.

II. Developments Affecting What Regulation of AT&T's Basic Interstate Services Would Be in the Public Interest

6. The Communications Act of 1934 states the purpose of making "available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ."¹³ Pursuant to this purpose, the Act created the Commission and specified regulatory provisions. We noted in *Competitive Carrier Rulemaking* that "[s]o long as our regulation imposes costs on some firms, and thus on the public, not exceeded by the benefits generated thereby, the provision of communications service by those firms can never be as 'efficient' nor can the charges be as 'reasonable' as they might be in the absence of such artificial costs."¹⁴ Courts have held that the Commission has broad discretion in altering its regulatory practices: "regulatory practices and policies that will serve the public interest today may be quite different from those that were adequate for that purpose in 1910, 1927 or 1945 . . ."¹⁵ As developments which might affect the costs and benefits flowing from a set of regulatory practices occur, we have the responsibility to evaluate the impacts of those practices and to consider whether those practices best promote the public interest.¹⁶

7. AT&T initially was the sole carrier for domestic, interexchange telecommunications services in many areas. Then, after the introduction of competition AT&T dominated the provision of these services. Major developments in the competition facing AT&T and conditions which may affect this competition have led to this look into the future of our regulation of AT&T. Four types of developments will be noted in this section: regulatory

⁵ 77 FCC 2d 384, *reconsidered*, 84 FCC 2d 50 (1980), further *reconsidered*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and Communications Industry Association v. FCC, 693 F. 2d 196 (D.C. Cir. 1982), cert. denied, 103 S.Ct. 2109 (1983).

⁶ 77 FCC 2d 308 (1979) [Notice of Inquiry and Proposed Rulemaking], 84 FCC 2d 445 (1981) [Further Notice of Proposed Rulemaking], 85 FCC 3d 1 (1980) [First Report and Order], 91 FCC 2d 59 (1982) [Second Report and Order], *reconsidered*, FCC 83-49 (released March 21, 1983), Mimeo No. 012 (released Oct. 6, 1983) [Third Report and Order], FCC-83-481 (adopted Oct. 19, 1983) [Fourth Report and Order].

⁷ AT&T's Petition for Reconsideration in CC Dkt. No. 79-252 (Sept. 22, 1982) (forbearance from regulating resale services of AT&T's separate subsidiary); AT&T's Petition for Rulemaking (May 6, 1983) (streamlining regulation of AT&T international private line services); AT&T Petition for Further Rulemaking in CC Dkt. No. 79-252 (Aug. 11, 1983) (streamlining regulation of AT&T's specialized satellite services).

⁸ "Basic" services are defined in *Second Computer Inquiry* as common carrier communications services which do not (1) employ computer processing applications acting on the format, content, code, or similar aspects of the subscriber's transmitted information; (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information. 77 FCC 2d at 496.

⁹ AT&T—Manual and Procedures for the Allocation of Costs, 84 FCC 2d 384, *reconsidered*, 86 FCC 2d 667 (1981), *aff'd sub nom.* MCI Telecommunications Corp. v. FCC, 675 F.2d 406 (D.C. Cir. 1982); FCC 83-374 (released Aug. 22, 1983).

¹⁰ AT&T, 86 FCC 2d 820 (1981).

¹¹ AT&T—Private Line Rate Structure and Volume Discount Practices, 74 FCC 2d 226 (1979).

¹² See Comptroller General, Legislative and Regulatory Actions Needed to Deal with a Changing Domestic Telecommunications Industry 9 (1981).

¹³ "Having established a policy in favor of competition, FCC must be in a position to monitor competitive developments so that regulation may be relaxed in markets where workable competition has been established and maintained in markets where monopoly conditions still exist."

¹⁴ 47 U.S.C. 151.

¹⁵ 85 FCC 2d at 13.

¹⁶ *Washington Utilities*, *supra* note 2, 513 F.2d at 1157. See also *AT&T v. FCC*, 572 F.2d 17, 20 (2d Cir.), cert. denied, 439 U.S. 875 (1978); *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 811 (1978); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940).

¹⁷ See, e.g., *Geller v. FCC*, 610 F.2d 973, 980 (D.C. Cir. 1979); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). "In those cases where a rough cost benefit analysis suggests that the costs of continuing to regulate the service offerings of any carrier or class of carriers by means of the prevailing tariff, entry, and exit rules exceed the benefits of applying them, even though some benefits may be apparent because, for example, of limited power over price, we may be well able to dispense with such regulation." *Competitive Carrier Rulemaking*, *supra* note 6, 85 FCC 2d at 3.

approval of entry by new competitors; the MFJ; greater reliance on market forces to promote the public interest regarding the rates and facilities of many carriers; and requirement of equal interconnection arrangements and access charges. A brief summary of these developments follows. The impacts of some of these developments and other changes are currently uncertain. Nevertheless, we believe it is appropriate to begin the public discussion on future regulation of AT&T in light of these developments.

8. During the past fifteen years, the Commission and courts approved entry by new private and common carriers into a wide range of services, technologies, and facilities arrangements.¹⁷ New domestic carriers provide switched as well as private line services for voice, data, facsimile, record, and video transmissions. Carriers with their own facilities may have costs similar to or even lower than AT&T's for certain interexchange transmissions.¹⁸ Carriers that resell AT&T's services typically engage in arbitrage, often by leasing private lines from AT&T and selling use of these lines for public switched services (like MTS). While the rates charged by resale carriers are influenced by AT&T's rates and rate structures, the existence of resale carriers decreases AT&T's ability profitably to charge disparate rates for services which are close supply substitutes. Many of AT&T's new rivals have been able to expand their facilities and revenues rapidly, though they are still far smaller than AT&T.¹⁹ Regulatory prohibition of limitations by AT&T on resale of and interconnection to certain of its facilities for interstate, domestic services have sped the entry and expansion of AT&T's rivals in many areas of the United States.

9. Another major development is the MFJ, entered into by the U.S. Department of Justice and AT&T and approved by Judge Harold Greene in 1982. The MFJ was intended in part to foster competition in interexchange services by changing the conditions under which AT&T and its rivals provide interexchange services. The

principal change is the divestiture of the Bell Operating Companies' exchange operations from AT&T's interexchange operations. The basic economic logic of the MFJ is that divesting the exchange telephone monopolies removes AT&T's ability to use leverage to exclude competition in interexchange services. The BOCs are required to develop non-discriminatory access charges, interconnection arrangements, and planning activities with regard to all interexchange carriers.²⁰ The new exchange areas or LATAs were established, *inter alia*, to be of sufficient size to attract several interexchange carriers for inter-LATA traffic in competition with AT&T.²¹ The MFJ's changes will not begin until January 1, 1984, and what their actual impacts on interexchange competition will be are as yet uncertain. But, Judge Greene stated his expectation that after divestiture competitive entry in interexchange telecommunications is likely to increase and AT&T should be unable to engage in monopoly pricing in any market.²² Another change brought about by the MFJ is that AT&T is free of the restrictions of its 1956 consent decree regarding engaging in non-telecommunications activities.

10. As a third development, in two major rulemaking proceedings the Commission approved greater reliance on market forces to promote the public interest regarding many rates and facilities. In *Second Computer Inquiry*, the Commission decided that enhanced services can be provided on an unregulated basis, which AT&T is doing through a separate subsidiary. The independent telephone companies and other firms can offer unregulated enhanced services without structural separation. The same conditions apply to the unregulated offering of customer-premises equipment. The decision to allow telephone common carriers, including AT&T via a separate subsidiary, to offer enhanced services and customer-premises equipment on an unregulated basis depended on our findings that, because of competition, they could not charge unjust or unreasonable rates for these offerings.²³

In *Competitive Carrier Rulemaking*, the Commission decided to forbear from requiring tariffs and facilities applications from resale carriers and specialized common carriers, and to streamline regulation of the rates and facilities of other non-dominant carriers, including domsats. Non-dominant carriers can change their rates by filing a notice fourteen days in advance without extensive cost support and can add new channels of communication to their previously-authorized facilities without Commission approval. The decreased regulatory burden on non-dominant carriers confers the advantage on them of greater flexibility and lower regulatory costs in their competition against AT&T. Though AT&T has petitioned for streamlined regulation of some of its services in the *Competitive Carrier* docket,²⁴ we have delayed acting on those petitions relating to domestic offerings pending the information we hope to acquire from this Inquiry.

11. A fourth major development in competitive conditions for interexchange services is our decision on access charges in *MTS/WATS Market Structure*. This proceeding addressed, in part, the disparities that existed in payments for use of exchange facilities by interexchange carriers and in their interconnection arrangements. Typically, AT&T's MTS and WATS services paid more for use of exchange facilities than did the services of carriers covered by the ENFA agreement,²⁵ and AT&T's services received superior interconnection arrangements. These disparities may have distorted competition between AT&T and other interexchange carriers. The Commission ordered the development of equal access charges and equally-available, unbundled interconnection arrangements for all interexchange carriers, with a premium access charge imposed on AT&T while it enjoys superior interconnection arrangements. Equal access charges and interconnection arrangements are intended to promote efficiency in the choice of telecommunications carriers, services, and facilities. Again, the transition to equal access charges will not begin until 1984, and what their actual impacts on interexchange competition will be during and after the transition are as yet uncertain.

¹⁷ See notes 2 and 3 *supra*.

¹⁸ *Competitive Carrier Rulemaking*, *supra* note 6, 85 FCC 2d at 26-27 (noting the possible cost advantage of satellite carriers over terrestrial carriers for certain transmissions).

¹⁹ See AT&T Petition for Further Rulemaking, *supra* note 7, at 9 (the FCC approved increases in satellite carriers from 4 to 11, in satellites from 17 to 38, and in transponders from 300 to 918 between 1982 and 1987); *Competitive Carrier Rulemaking*, *supra* note 6, FCC 83-481 at 26 n. 69 (revenues for various carriers in 1982); *id.* at 14 n. 33 (facilities of specialized common carriers valued at \$1.4 billion in 1982).

²⁰ *United States v. AT&T*, *supra* note 1, 552 F. Supp. at 165; *United States v. Western Electric Co.*, (1983-1) Trade Cas. (CCH) para. 65,333, at 60,980 (D.C. 1983). See generally Lavey & Carlton, *Economic Goals and Remedies of the AT&T Modified Final Judgment*, 71 Georgetown L.J. 1407 (1983).

²¹ *United States v. Western Electric Co.*, *supra* note 20, at 60,980 n. 27.

²² *United States v. AT&T*, *supra* note 1, 552 F. Supp. at 172.

²³ *Second Computer Inquiry*, *supra* note 5, 77 FCC 2d at 433 (the market for enhanced services is "truly competitive"), 440 (competition in CPE).

²⁴ See note 7 *supra*.

²⁵ See *MCI Telecommunications Corp. v. FCC*, 712 F.2d 517 (D.C. Cir. 1983); *Exchange Network Facilities for Interstate Access*, 80 FCC 2d 6 (1982).

III. Present Regulatory Scrutiny of AT&T

12. This section on present regulatory scrutiny of AT&T has two parts, rates and facilities. The discussion provides background for the exploration of options and does not attempt to provide a comprehensive description of the Commission's current regulation of AT&T's rates and facilities. Clearly, this discussion does not encompass the Commission's entire regulatory scrutiny of AT&T; our current regulatory scrutiny of AT&T includes complaint investigations and duty-to-serve and interconnection requirements. We solicit comments on the regulatory goals and problems identified in this section, as well as on other aspects of our present regulation of AT&T. Comments assessing the costs and benefits of our present regulatory scrutiny of AT&T would be helpful. For purposes of such comments, we set a relevant time frame as 1984 through 1990.

A. Rates

13. Section 201(b) declares unlawful all unjust or unreasonable charges; Section 202(a) declares unlawful all unjust or unreasonable discrimination in charges; and Section 205(a) empowers the Commission to determine and prescribe what will be the just and reasonable charges.⁴⁶ The goals of the Commission's rate regulation are to protect consumers against monopolistic or discriminatory charges while permitting the carrier to earn a fair return.⁴⁷ In addition, rate regulation has attempted to prevent implementation of noncompensatory rates to protect consumers using a carrier's other services from having to bear cross-subsidies and to protect competition from predatory practices which may lead to consumers facing monopolistic charges.⁴⁸ Two aspects of our present regulatory scrutiny of AT&T's tariffs will be discussed in this section, (1) cost justification, and (2) bundling of rate elements within a rate structure and other practices which restrain resale and interconnect competition and discriminate among customers.

14. One aspect of our present regulatory scrutiny of AT&T's rates

involves determination of AT&T's rate base and expenses for each basic service and the appropriate rate of return for all its regulated services. We have not found these tasks to be simple. For example, in *AT&T: Manual and Procedures for the Allocation of Costs*, we noted, the lack of a proper and manageable methodology for the allocation of investment and expenses to AT&T's individual services or service elements.⁴⁹ We lack the data, accounting procedures, and resources to detect all cross-subsidies in AT&T's tariffs. The difficulties of implementing a detailed cost allocation are attributable to, *inter alia*, AT&T's plant provisioning process, the fungibility of its plant and services, and our belief that the public interest is served by permitting AT&T to utilize efficiently its facilities for multiple services and to respond quickly to demands in the marketplace. Nevertheless, we have found major AT&T tariffs unlawful based principally on AT&T's failure to justify their rate levels and rate structures with appropriate cost data.⁵⁰ Our scrutiny of cost allocations in such cases may have prevented implementation of monopolistic, predatory, or discriminatory rates.⁵¹ On the other hand, we have observed that "traditionally, the stumbling block to our prescription of rates for AT&T's service offerings has been our inability to obtain the cost information needed to determine just and reasonable rates under Section 205 of the Act."⁵²

15. Another complication in our scrutiny of the cost basis for AT&T's rates is the derivation of the appropriate rate of return for AT&T. In *AT&T: Petition for Modification of Prescribed*

*Rate of Return*⁵³, we noted the difficulties inherent in analyzing AT&T's financial structure for interstate cost-of-capital weighting purposes; AT&T uses interchangeable funds derived from its interstate, intrastate, and unregulated activities in providing its various services and products. While these difficulties may be eased by divestiture, they are exacerbated by the expansion of AT&T's unregulated activities under *Second Computer Inquiry* and the MFJ despite structural separation. Under present procedures, adjustment of AT&T's authorized rate of return is a lengthy and costly process. During periods of volatile economic and financial conditions, it cannot be expected that the prescribed rate of return will yield just and reasonable prices, or that the carrier's prices will result in earnings by category of service that exactly yield the prescribed rate of return.⁵⁴ Furthermore, we require that AT&T target its rates so as to earn its prescribed rate of return for interstate operations on each of the three basic ICAM service categories.⁵⁵

Consequently, AT&T must perform traffic forecasts to justify its rates, with traffic depending *inter alia* on volatile economic and financial conditions.

16. It is expensive and time consuming for AT&T to prepare cost-justified rate filings and requests for changes in its authorized rate of return. So too is it expensive and time consuming for the Commission to examine them. We are concerned that present practices may provide AT&T with incentives for inefficiency in its investments and operations, and for rigidity in its rates, rate structures, and service offerings.⁵⁶ In at least some ways, our scrutiny of AT&T rates and earnings may result in telecommunications users paying higher prices than, and receiving services that do not satisfy their demands as well as, offerings under less burdensome regulation. We have been reluctant to waive fully the requirement that AT&T file cost justifications. Yet, the Common Carrier Bureau recently observed that the Commission has attempted to develop and interpret the economic support rules in 47 CFR 61.38 (1982) in a flexible manner.⁵⁷ The rules do not

⁴⁶ 84 FCC 2d at 397. The Interim Cost Allocation (ICAM) was designed to allocate costs between AT&T's MTS, WATS, private line and ENFIA services. See also Comptroller General, *supra* note 12, at 90 (weakness of Commission's Uniform System of Accounts).

⁴⁷ See, e.g., *Hi-Lo Final Decision*, 58 FCC 2d 362, 366-67 (1978); *Dataphone Digital Service*, 62 FCC 2d 774 (1977); *WATS Rejection Order*, 66 FCC 2d 9 (1977), *remanded sub nom.* MCI v. FCC, 627 F.2d 322 (D.C. Cir. 1980); *Series 7000*, 67 FCC 2d 1134 (1978), *aff'd sub nom.* ABC v. FCC, 663 F.2d 133 (D.C. Cir. 1980); *AT&T: Charges for Private Line Services (MPL)*, 74 FCC 2d 1, 31 (1979); *AT&T: Audiotapes Teleconference Service*, Transmittal No. 14316 (released Oct. 5, 1983).

⁴⁸ This brings us to the issue of AT&T's cost justification. In this regard, we have previously examined the satellite applications of monopoly carriers to ensure that ratepayers do not subsidize an unneeded and underutilized competitive facility. [Citing *Communications Satellite Corp.*, 43 FCC 2d 1143 (1973).] . . . [W]e question whether AT&T has considered all factors in assigning transponder costs to [this] service." *AT&T: Satellite-Based Private Data Service Offering*, 89 FCC 2d 1116, 1123 (1982).

⁴⁹ *AT&T: Charges for Private Line Services*, *supra* note 30, 74 FCC 2d at 41.

⁵⁰ 86 FCC 2d 221, 228 (1981).

⁵¹ *Id.* at 250.

⁵² *AT&T: Equalization Filing*, 89 FCC 2d 1000 (1982); note 29 *supra*.

⁵³ See, e.g., Averch & Johnson, *Behavior of the Firm Under Regulatory Constraint*, 52 Am. Econ. Rev. 1058 (1962); Joskow & Noll, *Regulation in Theory and Practice: An Overview*, in G. Fromm (ed.), *Studies in Public Regulation* 1 (1981); S. Breyer, *Regulation and Its Reform* 36-59 (1982).

⁵⁴ Action on AT&T Special Permission Requests, Public Notice 3546 (April 11, 1983); Letter from

Continued

⁴⁷ 47 U.S.C. 201(b), 202(a), 205(a).

⁴⁸ See, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602-05 (1944); *AT&T* (Docket No. 19129), 38 FCC 2d 213, 226 (1972); *AT&T: Private Line Rate Structure and Volume Discount Practices*, *supra* note 11.

⁴⁹ See, e.g., *Hi-Lo Designation Order*, 44 FCC 2d 607, 609-700 (1974) (concern that rate revisions could affect the implementation of our policy of "full and fair competition among and between existing and new carriers"); *American Satellite Corp.*, 55 FCC 2d 1092 (1977).

require AT&T or other carriers to provide voluminous or detailed information as long as the cost submission is sufficient for review purposes in a particular case. AT&T was encouraged to utilize innovative methodologies, such as comparability studies, so that the Commission can pursue sufficient tariff review while saving time and expense for all concerned. Also, in light of the Commission's proposal to shorten tariff notice periods for all dominant carriers including AT&T,³⁸ the Bureau stated its willingness to entertain requests for waivers from AT&T seeking 45 and 35 day notice periods in lieu of the normal 90 and 70 day periods. Finally, our scrutiny of AT&T's rates and earnings may in some instances impose on AT&T a competitive disadvantage and might be unnecessarily burdensome where AT&T faces substantial competition. In *Competitive Carrier Rulemaking*, we removed the requirement of extensive support data for tariffs and rate-of-return review from most of AT&T's competitors by forbearance or streamlined regulation. 47 CFR 61.39.

17. Another aspect of our present regulatory scrutiny of AT&T's tariffs is our pressure on AT&T to unbundle its rate structures and utilize consistent pricing. Making AT&T's services and facilities available on a disaggregated basis would decrease discrimination among customers (market segmentation), foster a more competitive marketplace through expanded interconnection and resale opportunity, and increase our ability to examine the cost justification for individual service offerings.³⁹ For example, in 1981 AT&T filed a tariff to provide a high-speed digital data transmission service to meet the requirements of a single firm.⁴⁰ AT&T proposed to offer wide-band, terrestrial T1 carrier links exclusively as part of its satellite-based, end-to-end

Series 9000 service. Other potential customers were interested in using these terrestrial facilities but not the end-to-end service; AT&T's Dataphone Digital Service (DDS) tariff did not offer those specific facilities nor the same pricing basis. The bundled tariff would have impaired competition from interconnect carriers and would have deprived DDS customers an opportunity to cut their costs. After Satellite Business Systems petitioned for rejection of the tariff and denial of the associated 214 application, we found that AT&T's offering of the end-to-end service should be preceded by a tariff offering the terrestrial facilities in a reasonable, nondiscriminatory manner. A discrete, cost-based offering of the terrestrial facilities would enhance our ability to evaluate the reasonableness of the rates for individual AT&T service offerings through in-kind comparison with other tariffed services; then, the tariffs themselves would have self-policing attributes which would lessen the need for long and cumbersome rate investigations.⁴¹

18. By bundling rate elements, AT&T has attempted to offer the same transmission channels under different tariffs and rate structures according to specific uses. We have used the tariff review process to attempt to prevent this practice and the resulting unreasonable rate discrimination.⁴² In addition, we have pressured AT&T to eliminate tariff provisions which have not been justified and could discourage potential users and competition, such as a twelve-month notice requirement for terminating a service and excessive minimum usage charges.⁴³ Those types of provisions are especially suspect when they favor AT&T's subsidiary offering enhanced services. Examination of AT&T's tariff for provisions which foster monopolistic, predatory, or discriminatory rates can be a relatively simple process, not requiring extensive

analysis of cost data. Yet, together with the market forces of resale and interconnection, this examination can be a powerful tool in ensuring just and reasonable rates.

B. Facilities

19. Section 214 requires carriers to obtain a license from the Commission for construction or use of transmission lines, or for discontinuance of services.⁴⁴ The Commission must certify that a construction or use of lines will serve the present or future public convenience and necessity. A discontinuance must be certified as impairing neither the present nor future public convenience and necessity. The legislative history indicates two purposes for these provisions. First, there was the fear that duplicate, unnecessary, or inefficient facilities would inflate a carrier's rate base and lead to higher charges to users of services.⁴⁵ Scrutiny under section 214 can be a more economical means of preventing improvident or unduly expensive investments and the resulting increases in rates than the alternative of subsequent disallowance of an expenditure from the rate base. Second, the discontinuance provision was designed to bolster the goal of nationwide availability of adequate service by assuring that carriers do not terminate a service without prior regulatory examination.⁴⁶

20. Again, we have not found regulation of AT&T pursuant to Section 214 to be simple. Section 214 has been a limited tool in controlling AT&T's rate base. Scrutiny under Section 214 has been applied to only a small percentage of AT&T's construction budget, investments categorized as "lines."⁴⁷ The largest part of AT&T's rate base has been built over the years without any regulatory scrutiny. Also, the nationwide switched network is complex and plant additions have to be planned by AT&T years in advance on the basis of forecasts which may or may not be accurate as to actual needs. We observed in 1977 in Docket No. 19129 that chronic forecasting errors by AT&T led to network underutilization and we

Common Carrier Bureau to AT&T, Ref. No. 61610 (April 8, 1983) (regarding requests for waiver of §§ 61.38 and 61.58 of the Commission's Rules for tariffs for Satellite Digital Circuits, International Voice-Only Private Line Service, and High Speed Switched Digital Service).

³⁸ Amendment of Section 3 and 61 of the Commission's Rules, FCC 83-402 (released Oct. 5, 1983).

³⁹ See AT&T: Charges for Private Line Services, *supra* note 30, 74 FCC 2d at 274; AT&T: First Satellite Based Private Data Service Offering, *supra* note 31, 89 FCC 2d at 1122; AT&T: Equalization Filing, *supra* note 35, 89 FCC 1005; AT&T: Picturephone Meeting Service, 89 FCC 2d 1017, 1024-25 (1982). See also, Comptroller General, *supra* note 12, at 81-82 (encouraging Commission to continue pursuing non-cost approaches, including less customer segmentation and more arbitrage, to limiting cross-subsidies).

⁴⁰ AT&T: Satellite-Based Private Data Service Offering, *supra* note 31, 89 FCC 2d at 1117-22. The firm was R.R. Donnelly and Sons Company

⁴¹ *Id.* at 1122.

⁴² See AT&T: Picturephone Meeting Service, *supra* note 36, 89 FCC 2d at 1025 (AT&T could market Picturephone Meeting Service as a separate service with end-to-end capability at a price equal to the sum of separate tariff charges for each component part; AT&T would have to price the transmission elements of PMS the same as it does in the tariff for those elements alone); AT&T: Basic (Bell) Packet Switching Service (BPSS), 91 FCC 2d 1, 16 (1982), FCC 83-221 at 18-19 (released May 26, 1983) (requiring AT&T to eliminate DDS rate structure which gave special treatment to BPSS terminations); AT&T: Audiographics, *supra* note 30 (disaggregating MTS rates in the manner proposed would cause different rates to apply, without any apparent cost justification, to MTS calls depending on whether they were made in the context of Audiographics or as other MTS applications).

⁴³ AT&T: BPSS, *supra* note 42, FCC 83-221 at 15-18.

⁴⁴ 47 U.S.C. 214.

⁴⁵ Section 214 was "designed to prevent useless duplication of facilities, with consequent higher charges upon the users of the service." 78 Cong. Rec. 10314 (1934) (Rep. S. Rayburn, Chairman of the Sponsoring Committee); AT&T, 10 FCC 315, 321 (1944).

⁴⁶ 89 Cong. Rec. 765-67 (1943).

⁴⁷ See AT&T: BPSS, *supra* note 42, 91 FCC 2d at 14 (multiplexing equipment and switching equipment incorporating multiplexing functions subject to Section 214 certification requirement, but no decision to apply Section 214 to pure switching equipment).

directed that Section 214 authorization procedures be used to promote better network construction, management, and utilization.⁴⁸ In *Competitive Carrier Rulemaking* we expressed our frustration, under the Section 214 procedures for AT&T in effect in 1979, of reviewing AT&T's construction plans too late in the planning cycle reasonably to require significant changes.⁴⁹ We noted the need to expand our review beyond processing numerous facility-by-facility applications without regard to their impacts on the overall network. Current procedures involving review of AT&T's annual Blanket Filing incorporate analysis of network utilization and comparisons of forecasted and actually-implemented circuits.⁵⁰ We have encouraged AT&T to file more of its Section 214 applications in the annual Blanket filing to give the Commission a more accurate view of proposals for network development in the coming year, allow efficient use of Commission resources, and reduce paperwork.⁵¹ However, we have refused to authorize AT&T to install at some unspecified time in the future multiplexing equipment on previously-authorized channels without specific Section 214 certification.

21. Few Section 214 applications by AT&T are challenged by the Commission or other parties; most are routinely processed without extensive analysis of AT&T's need for the facilities, the efficiency of the design, or the competitiveness of the procurement practice. Some applications are granted expeditiously after AT&T shows that immediate action is necessary and requests special temporary authority.⁴⁷ CFR 63.04. Occasionally, review under Section 214 serves as a tool for us to reflect our concerns about the impacts of AT&T's entry, expansion, and exit in and from facilities and services on various regulatory policies. As an illustration, we rejected AT&T's tariff to offer a basic packet data switching service (BPSS) after complainants asserted that, contrary to *Second Computer Inquiry*, the service would favor AT&T's subsidiary. We required that AT&T obtain Section 214 authorization for the service. Later, we granted AT&T's Section 214 application after finding that, as revised by AT&T, the service would be a satisfactory, nondiscriminatory common carrier

offering.⁵² Furthermore, we conditioned Section 214 certifications for AT&T's satellite-based private data service offering and Picturephone Meeting Service on certain tariff filings by AT&T to prevent discrimination.⁵³

22. Section 214 certification procedures can be abused by AT&T's competitors to delay or block entry of AT&T's innovative and useful services.⁵⁴ In addition, the exit (discontinuance) constraints of Section 214 may impose substantial losses on a carrier after competitive circumstances make a service uneconomic, thereby deterring potential entry.

23. Aside from the operational problems with applying our present regulatory scrutiny of AT&T's facilities, we are concerned about the effects of these practices in imposing a competitive disadvantage on AT&T. Our orders in *Competitive Carrier Rulemaking* lifted much of the burden of obtaining approval for entry, expansion, and exit from most of AT&T's rivals by forbearance or streamlined regulation. 47 CFR 63.07, 63.71. The costs and benefits of the present regulatory scrutiny of AT&T must be re-examined in light of the growing competition facing AT&T and the disparity in regulatory burdens. Also, the divestiture and injunctive provisions of the MFJ may decrease the need to explore through the Section 214 certification process concerns about the possible impacts on certain policies of AT&T's activities.

IV. Possible Options For Alternative Regulation of AT&T

A. Legal Analysis

24. A brief legal analysis of our authority to modify our regulation of rates and facilities will be stated here. In general, we believe we have a duty to refrain from imposing unnecessary regulatory burdens on carriers. See *Further Notice in Competitive Carrier Rulemaking*, *supra* note 6, 84 FCC 2d at 455; *Home Box Office v. FCC*, 567 F. 2d 209 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977); *Geller v. FCC*, 610 F. 2d 973 (D.C. Cir. 1979). The Commission has discretion in choosing which regulatory tools will be most effective in promoting the public interest. *Computer and Communications Industry Ass'n v. FCC*, 693 F. 2d 198, 212 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983); *Western Union Telegraph Co. v. FCC*, 674 F. 2d 160, 165-66 (2d Cir. 1982); *Philadelphia Television Broadcasting Co. v. FCC*, 359

F. 2d 282 (D.C. Cir. 1966). We solicit comments on the applicability of the following analysis to our regulation of AT&T. We also seek comments on our flexibility under the Communications Act in other regulation of AT&T.

1. Rates

25. In meeting the statutory standard of just and reasonable rates, it is the result reached and not the method employed which controls. *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1943). The Commission is not limited to specific formulae or methods to achieve rates which fall in the "zone of reasonableness." *FERC v. Pennzoil Producing Co.*, 439 U.S. 508, 516-17 (1979). "[T]he Commission has broad discretion in selecting methods for the exercise of its power to make and oversee rates" and the question for appellate review is "whether the FCC made a reasonable selection from the available alternatives." *Aeronautical Radio v. FCC*, 642 F. 2d 1221, 1228 (D.C. Cir. 1980) *cert. denied*, 451 U.S. 920 (1981). Market forces can check rates which would be unlawful under the Communications Act. *United States v. FCC*, 652 F. 2d 72, 104 (D.C. Cir. 1980). When a carrier faces substantial competition, its rates should meet the Commission's standard of reasonableness; it would not be profit maximizing for them to be monopolistic (above cost—potential customers will turn to alternative suppliers), predatory (below cost—the carrier cannot drive and keep its rivals out of the market and recoup its lost profits), or discriminatory (customers facing high discriminatory prices will turn to alternative suppliers, including arbitrageurs (resellers)). In *Competitive Carrier Rulemaking*, we held that we have the authority to presume lawful rates filed by carriers lacking market power,⁵⁵ relying on the complaint process and market forces to ensure just and reasonable rates.

26. Even if AT&T possesses market power, we are not tied to relying on repeated detailed investigations into service-specific cost allocations and the appropriate rate of return for AT&T's basic interstate services. Administrative agencies have the authority to adapt their rules and practices to the demands of changing circumstances. *Permian Basin Area Rates Cases*, 390 U.S. 747, 784 (1968); *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 811 (1978). During times of variable economic and financial conditions affecting operating and capital costs and

⁴⁸ AT&T: Charges for Interstate Telephone Services (Docket No. 19129, Phase II), 64 FCC 2d 1, 51-52 (1977).

⁴⁹ 77 FCC 2d at 344-47.

⁵⁰ AT&T, W-P-C-5010 (pending).

⁵¹ The total construction cost for the facilities associated with the 1983 Blanket filing is estimated at only \$73.6 million. *Id.*

⁵² AT&T: BPSS, *supra* note 42.

⁵³ See notes 31, 39 *supra*.

⁵⁴ *Competitive Carrier Rulemaking*, *supra* note 6, 84 FCC 2d at 490.

⁵⁵ 85 FCC 2d at 30-38. The concept of market power will be discussed in Section VI *infra*.

demand, the long delays inherent in present methods of supporting tariffs through cost allocations and determining a reasonable rate of return may be contrary to the public interest. *United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division*, 358 U.S. 103, 113, (1958) (Utilities "should not be precluded from increasing the price of their product whenever that is the necessary means of keeping the intake and outgo of their revenues in proper balance . . ."). For periods of several months or longer, under the current cost-justification approach AT&T may be stuck with rates yielding an unfairly low rate of return, or we may be unable to adjust rates so as to prevent AT&T from earning unfairly high profits. Appropriate formulae to justify rate changes may include use of cost or demand indices which can be developed and reviewed more quickly than present supporting data. A formula could be developed and applied to update readily AT&T's authorized rate of return on a regular basis. Estimates of cost-based changes using indices may fall within the category of "pragmatic adjustments called for by particular circumstances" to achieve rates within the "zone of reasonableness." *Permian Basin, supra*, 390 U.S. at 777, 797.

27. Our policy of permitting resale arbitrage should curtail opportunities for unreasonable discrimination in rates; opportunities for monopoly pricing also should decline. *AT&T v. FCC*, 572 F.2d 17, 23 (2d Cir.), cert. denied, 439 U.S. (1978). Absent tariff impediments to arbitrage and interconnection, resellers have no capacity limitations in their use of one AT&T service to compete with another AT&T service. The availability of this market check on AT&T's rate structure may make some streamlining of our scrutiny of cost allocations and discrimination possible.

2. Facilities

28. The Commission has considerable discretion in determining whether the construction, acquisition, or use of lines, or the discontinuance of a service promotes the public interest under Section 214. *FCC v. Communications*, 346 U.S. 86, 90 (1953). There are no procedural requirements under Section 214(a). *ITT World Communications v. FCC*, 595 F.2d 897, 900 (2d Cir. 1979). Nor does Section 214 specify the amount or type of information to be obtained from applicants.

29. Our rules require less comprehensive facilities information for small projects and, in some cases, provide for continuing authority to supplement existing facilities upon notification only. See 47 CFR 63.02.

63.03, 63.07. In *Competitive Carrier Rulemaking*, we noted that non-dominant carriers, whose rates are governed by market competition, lack the incentive to overinvest because they cannot charge supracompetitive rates to cover an inflated rate base. Also, the existence of actual and potential substitutes for the services of non-dominant carriers ensures that discontinuing any of their services would not endanger the availability of adequate telephone service. 85 FCC 2d at 39-49. We found that our statutory purposes are promoted by granting non-dominant carriers broad initial certification and allowing them simply to report semi-annually on their circuits added on previously-authorized facilities. See 47 CFR 63.07(e).

30. Even if AT&T possesses market power, the statutory purposes underlying Section 214 may be best promoted by overseeing the development of AT&T's comprehensive network rather than focusing on circuit-by-circuit additions. Recently, we decided simply to monitor AT&T's activation of circuits on the ANZCAN cable, an action not involving major new investments, without requiring prior approval for activation.⁶⁶ Also, though domsats were treated as dominant in our First Report in *Competitive Carrier Rulemaking*, we concluded there that domsats did not require authorization for use of each channel of a previously-reviewed satellite or earth station; channel-specific authorizations could delay or inhibit satellite service to customers without any benefits.⁶⁷

B. Options

31. This section discusses some possible options for alternative regulation of AT&T's domestic rates and facilities. The section concludes with an analysis of the possible application of an option to only some of AT&T's services rather than to the entire carrier for a period of time. We solicit comments on these options as well as others. The next section will focus on the conditions under which we could pursue each option. Note that the listing of any option here does not mean that the Commission views the option as a desirable alternative to present regulatory scrutiny under current market conditions.

1. Rates

32. The options discussed in paragraph 33-35 assume that the Commission will continue to review

AT&T's tariffs for unjustified bundling of rate elements and other practices which restrain resale and interconnect competition and discriminate among customers. Resale and interconnect competition are important market forces on which a decision to lessen regulatory scrutiny of other aspects of AT&T's tariffs may depend. Analysis of tariffs for bundling and other restrictive provisions and practices might be done without requiring AT&T to file or the Commission to examine extensive support data. Paragraphs 33-35 deal with alternatives to our scrutiny of cost justification. Paragraph 36 discusses further deregulatory options.

33. To limit the burden of cost justification, cost and construction indices might be developed to adjust the revenue requirement for a particular service—its rate base, rate of return, and expenses. Cost indices could be correlated to rate elements in tariff structures. Demand indices then would be applied to calculate a reasonable rate for the service. A formula for AT&T's authorized rate of return may involve financial indicators such as the average rate over a given period for U.S. Treasury bills of a given maturity. Use of indices would help keep rates just and reasonable in the face of variable economic and financial conditions. They also would reduce the need for undertaking expensive and time-consuming cost justification analysis, thereby decreasing the burden on AT&T and the Commission.⁶⁸ More extensive cost and rate-of-return studies could be required, if necessary, and the Commission could investigate the lawfulness of index-adjusted rate.

34. To give AT&T more rate flexibility without increasing the frequency of cost-justified tariff filings, AT&T might file a tariff with a zone of reasonableness for a service's rate and a cost justification for the zone.⁶⁹ A tariff with a zone of reasonableness could be filed for a group of services, such as MTS service over a range of distances and over a

⁶⁶ See Comptroller General, *supra* note 12, at 55 (automatic rate adjustment clauses make it easier for utilities to deal with inflation and require regulators to conduct fewer rate hearings). The Staggers Rail Act of 1980 provides for use of cost indices in establishing the reasonableness of rail rates. 49 U.S.C. 10707a (1982).

⁶⁸ In J. Meyer, et al., *The Economics of Competition in the Telecommunications Industry* 309 (1979), the authors recommend that "minimum rate regulation should be largely or completely abolished" and "maximum rate regulation should be greatly relaxed and made more flexible by gearing it to a zone of reasonableness within which automatic increase in rates can be made, with a cap geared loosely to general price changes in the economy." The Staggers Rail Act of 1980 provides for zones of rail carrier rate flexibility. 49 U.S.C. 10707a (1982).

⁶⁷ AT&T: ANZCAN Cable. FCC 83T-10 (released June 23, 1983).

⁶⁸ 85 FCC 2d at 46.

range of origin-destination pairs. Or the zone could apply to a single service over time. As under current practices, we would allow a proposed zone to go into effect, suspend or reject it, or prescribe a zone. Such zones could be combined with a prescribed overall rate of return which we would monitor.

35. Another option is to adopt for AT&T the streamlining treatment in *Competitive Carrier Rulemaking*.⁶⁰ Generally, reliance would be placed on market forces, including competition from resellers and other facilities-based carriers and demand substitutability across AT&T's services, rather than accounting scrutiny to ensure that each of AT&T's rates is cost justified. We decided that non-dominant carriers can file tariffs without cost justification on fourteen-days notice. AT&T's tariffs might be considered *prima facie* cost justified, but would be examined during the notice period for bundling and other restrictive provisions and practices. We can require a non-dominant carrier to submit supporting data, extend the tariff's effective date, suspend or reject it, or later investigate it on receipt of a complaint or on our own initiative. A party requesting suspension has the burden of a four-part showing: (1) There is a high probability that the tariff would be found unlawful after an investigation; (2) the alleged harm to competition outweighs the injury to consumers from the unavailability of the service at the tariff's rates and conditions; (3) failure to suspend would cause irreparable injury; and (4) suspension would not otherwise be contrary to the public interest. These carriers' rates of return are neither prescribed nor monitored. A variant on this alternative would be for us to prescribe an overall rate of return for AT&T's regulated services and monitor its earnings on all those services; this process would not require service-specific cost allocations, except as between regulated and unregulated services.

36. If we pursue the forbearance treatment in *Competitive Carrier Rulemaking*⁶¹ for AT&T, AT&T would not be required to file tariffs or report its rate of return. However, requiring AT&T to file tariffs may serve our statutory purposes in two ways. First, we can scrutinize tariffs for provisions or practices that restrict resale or interconnection, are discriminatory, or entail bundling. This scrutiny can supplement market forces and help

ensure that rates are just and reasonable even if we do not undertake analysis of AT&T's costs and rates of return. Second, public tariffs can increase the ability of a competing carrier or customer to bring a successful complaint against AT&T to the Commission for unjust or unreasonable rates or for failure to serve or interconnect. Similarly, public tariffs can aid a potential plaintiff in bringing an antitrust case against AT&T for predatory pricing or practices or for denial of essential facilities.⁶² Requiring that tariffs be filed in a certain format and with certain charges and service elements identified can facilitate the checks provided by the complaint process and antitrust enforcement. The availability of public tariffs together with our complaint process and antitrust enforcement may make it unnecessary for us to scrutinize tariffs for bundling and other restrictive or discriminatory provisions or practices. Under this approach, we could investigate a rate on receipt of a complaint or on our own initiative.

2. Facilities

37. Three alternative regulatory approaches to AT&T's facilities will be noted. First, we can expand the scope of projects covered by 47 CFR 63.02 and 63.03. Section 63.02 covers applications for extensions of service into domestic territory at present not directly served by the applicant through the construction acquisition, or operation of facilities not costing the applicant in excess of \$50,000 or with an annual rental not exceeding \$10,000. Such applications may omit much of the information normally filed pursuant to 47 CFR 63.01; at minimum, the application under § 63.02 shall contain a general description of the existing and proposed facilities, points of service, and costs. Expanding the coverage of this approach, we could drop some of the information AT&T currently must file in most of its 214 filings, with limitations on the cost or types of facilities covered by this procedure. Section 63.03 covers, *Inter alia*, applications for domestic channels that supplement existing facilities where the construction or acquisition cost does not exceed \$500,000 or where the annual rental does not exceed \$100,000, where the points of service were previously authorized to the applicant for the type of service involved, and where the transmission facilities involved were

previously authorized. When filed with the necessary information, such applications shall be deemed to have been authorized by the Commission on the 21st day after filing unless the Commission notifies the applicant to the contrary. Section 63.03 also provides for continuing authority for small projects involving supplementing existing facilities. This approach may lead us to expand the projects that would be deemed authorized on the 21st day after filing an application unless AT&T is otherwise notified, again with possible limitations on the facilities qualifying for this treatment.

38. A second option for revision of regulating AT&T under Section 214 follows the streamlining approach in *Competitive Carrier Rulemaking*.⁶³ Under this approach, non-dominant carriers generally receive initial authorization to serve any domestic points, and report to the Commission semi-annually on the installation or lease of additional circuits over previously-authorized transmission media. This approach provides for reporting of construction costs of the facilities involved. Regarding discontinuance of services by non-dominant carriers, this Order provides that these carriers shall notify all customers affected by the planned discontinuance that the Commission normally authorizes such discontinuance. Customers can file comments with the Commission within fifteen days of the notification. The carrier then files with the Commission an application to discontinue service, which is automatically granted on the 31st day after its filing unless the Commission has notified the carrier that the application is denied.

39. Another option follows the forbearance approach in *Competitive Carrier Rulemaking*.⁶⁴ Carriers subject to this approach are not required to file any information under Section 214. Market forces are relied on to check overbuilding; a carrier facing substantial competition cannot charge supracompetitive prices to cover improvident or inefficient investments. The availability of alternative suppliers is relied on to check harms to universal service from discontinuance of a service. A variant on this approach involves using the discontinuance procedure described in paragraph 38 *supra* if there are other potential suppliers to check overbuilding by AT&T but AT&T's exit

⁶⁰ 85 FCC 2d 52; 47 CFR 61.39. See also 49 U.S.C. 10709 (1982) (determination of market non-dominance in rail carrier rate proceedings).

⁶¹ 91 FCC 2d at 71.

⁶² See, e.g., *United States v. AT&T*, 524 F. Supp. 1330, 1360-61 (D.D.C. 1981); *United States v. Terminal R.R. Ass'n*, 224 U.S. 383, 411 (1912); *Hecht v. Pro-Football Inc.*, 570 F.2d 982, 992-93 (D.C. Cir. 1977).

⁶³ 85 FCC 2d at 53-55; 47 CFR 63.07, 63.71; FCC 83-481, at 26-27.

⁶⁴ 91 FCC at 71-72.

may leave no actual supplier for some time period.

3. Selective Application of Alternatives

40. Each of the preceding options for regulation of AT&T's rates and facilities could be applied to all of AT&T's domestic services and facilities in all of the areas it serves simultaneously. On the other hand, our evaluation of market conditions may make some specific domestic services, facilities, and areas more attractive than others for application of an alternative at a particular time. As examples, AT&T filed separate pleadings for streamlined regulation of the resale services of its separate subsidiary and its specialized satellite services.⁶⁵ AT&T's enhanced services have already been deregulated, pursuant to *Second Computer Inquiry*, subject to the requirement of a separate subsidiary.

41. Regarding rate-regulation alternatives, several considerations bear on choosing services for application of less stringent regulatory alternatives. First, there may be limited opportunities for cost shifting from some candidates for less stringent rate regulation to more heavily regulated services, such as the services provided by AT&T's separate subsidiary. A possible problem with selective application of an alternative is that it may require an allocation of costs between services for which cost-justified tariffs are desired and services subject to an alternative approach to regulating rates. Shared facilities not only complicate cost allocations, but also make it difficult to identify the facilities associated with a particular service for different regulatory treatment under Section 214. Cost shifting toward some services would inflate the rate base of the services and, possibly, harm consumers because of higher rates for the services. Next, potential customers of some candidates for decreased rate regulation may have abundant close actual and potential substitutes. Abundant close substitutes reduce the likelihood that AT&T would engage in monopolistic, predatory, or discriminatory pricing or practices. According to AT&T's Petition for Further Rulemaking, AT&T's specialized satellite services have this characteristic.⁶⁶ It would be difficult for

AT&T to engage in predation or discrimination in a service subject to easy resale and interconnection and offered on an unbundled basis. Note that a heavily regulated service of AT&T may serve as a close substitute for one of its services subject to a rate-regulation alternative. Third, services on which AT&T's competitors are not heavily dependent may be good candidates for selective application of rate-regulation alternatives. Finally, it may be desirable that services subject to early streamlined rate regulation have relatively small revenues so that any harmful impact on consumers and competition would be small.

42. Similarly, several considerations bearing on the choice of facilities and services for application of less stringent regulation under Section 214 can be identified. First, low-cost facilities involve less risk of inflating rate base. Next, AT&T is unlikely to overbuild facilities that will increase its rate base for services having abundant close substitutes. Nor would discrimination in services with abundant close substitutes impair the public interest. Third, it is unlikely that approval of facilities associated with a service subject to easy resale and interconnection and offered on an unbundled basis would have to be conditioned to protect the public interest.

43. While placing AT&T's unregulated services under a separate subsidiary with separate facilities, personnel, and books of account could decrease opportunities for cost shifting, such separation can create inefficiencies through lost economies of scale and scope. We seek comments on whether we should condition less stringent rate and facilities regulation on structural separation from more heavily regulated services and facilities, and, if not, what accounting procedures should be developed to maintain the integrity of the more regulated services.

44. Pursuant to our decision in *Second Computer Inquiry*, AT&T formed a fully-separated subsidiary to provide unregulated enhanced services and customer-premises equipment (CPE).⁶⁷ FCC 2d at 474. We stated in that decision that these unregulated activities should be separated from the provision of basic transmission services to lessen the potential that users of AT&T's basic services will be subsidizing AT&T's unregulated activities. This subsidiary is not allowed

to own transmission facilities nor to provide common carrier services. We seek comments on two issues which may arise. First as we noted in *Competitive Carrier Rulemaking*,⁶⁸ we need to consider whether we might authorize this subsidiary to provide basic resale services treated by forbearance. If so, we might review AT&T's tariffs for the underlying services that are resold to ensure that the services are general and not tailored or with preferences for its subsidiary. Second, AT&T may seek to supply non-telecommunications products and services. Because the restrictions on AT&T's non-telecommunications activities of the 1956 consent decree are lifted by the MFJ, AT&T is not confined to supplying basic services, enhanced services, and CPE, the categories discussed in *Second Computer Inquiry*. Should AT&T be allowed to engage in these unregulated activities (1) through its corporate component providing regulated basic services, (2) through its subsidiary formed pursuant to *Second Computer Inquiry*, or (3) only through a new, fully-separated subsidiary? What accounting practices, if any, should be required if the first option is pursued?

V. Conditions Under Which Alternative Regulation Would Be Desirable

45. This section requests comments on the conditions under which options for alternative regulations of AT&T would be desirable. We discuss three types of conditions which may signal the appropriateness of a transition from present regulatory scrutiny of AT&T to a specific option. Comments are invited on the desirability of specific options under these types of conditions and others, what information we need to evaluate these conditions, and how shall we obtain that information.

46. First, some options may be more effective than present regulatory scrutiny regardless of market developments. For example, we have recently proposed to shorten tariff notice periods for all dominant carriers, including AT&T.⁶⁹ This action will enhance AT&T's ability to respond to quickly changing market conditions without compromising our review functions. Also, we have stated our desire to revise our practices under Section 214 for dominant carriers to increase the effectiveness of our

⁶⁵ See note 7 *supra*. The Staggers Rail Act of 1980 provides for the determination of market non-dominance in rate proceedings for particular services of a rail carrier: 49 U.S.C. 10709 (1982). Comments describing how this provision has worked for rail carriers or similar regulatory efforts may be helpful in our analysis of selective application of regulatory alternatives for AT&T.

⁶⁶ *Supra* note 7, at 5 ("specialized satellite services are subject to a high degree of actual and potential competition, entry barriers are low,

existing carriers can expand or re-deploy their assets rapidly to take advantage of market opportunities, and transponder and earth station facilities are widely available and dispersed among many suppliers").

⁶⁷ *Supra* note 6, FCC 83-69, at 8 n. 17. In the Fourth Report, *supra* note 6, FCC 83-451, at 28, we authorized resale affiliates of exchange telephone companies to be treated by forbearance for their domestic, interstate services.

⁶⁸ Amendment of Sections 1 and 61 of the Commission's Rules, *supra* note 38.

review.⁶⁹ Some options may be desirable regardless of market developments because they improve the effectiveness of our regulatory review of AT&T. Other options may be desirable because their costs and benefits are better than those of present scrutiny.

47. Second, the occurrence of specific events may make various options more desirable than they are currently. Such events may include implementation of equal interconnections and access charges, completion of a revised Uniform Systems of Accounts, or a decision in a possible rulemaking addressing MTS/WATS rate restructuring.

48. Third, certain options may be undesirable if AT&T possesses substantial market power. Implementation of the alternative regulatory practices in *Competitive Carrier Rulemaking* was limited to carriers lacking market power. It may be that we can look to market forces to check all of AT&T's rate and, thereby, its facilities decisions only if AT&T lacks market power in all of its services. However, given continued regulation of some of AT&T's services and competition, it may be that AT&T lacks market power in other services. For example, potential customers of one AT&T service could use another, heavily regulated AT&T service or a service provided by one of AT&T's competitors. A combination of market forces and regulation of some of AT&T's services may make it desirable to implement alternative regulation of other AT&T services before AT&T lacks market power in all of its services. For example, suppose that AT&T possesses market power in the absence of regulation, *i.e.*, it could profitably raise the prices of all its services above the competitive level. However, if some services, such as MTS/WATS, are constrained by regulation to competitive prices, AT&T may be unable profitably to charge supracompetitive prices for some of its other services, such as private line services, even absent regulatory constraints on their prices. Potential customers for the latter services will be able to respond to high prices by choosing either AT&T's regulated, competitively-priced services or its competitors' services. As will be explained in the next section, there are various rough indicators of market power. If certain options are desirable only after a finding that AT&T lacks market power, we seek guidance on how we should proceed to determine the existence of that conditions (e.g., the Commission annually collects relevant

data from all common carriers and operators or private systems in the relevant market, calculates AT&T's market share, and commences rulemaking proceeding when that share falls below sixty percent or falls by more than five percent in two years). Also, it may be desirable to alter regulation of AT&T if, after concluding that AT&T lacks market power and changing our regulation, we then observe a rise in AT&T's market power.

VI. Assessing AT&T's Market Power

49. Assuming that certain options are desirable only if AT&T lacks substantial market power, it will be helpful to inquire into the appropriate evaluation of AT&T's market power. This section outlines several possible approaches to this evaluation. We seek comments on the advantages and disadvantages of these approaches, both theoretical and empirical. Discussion of alternative methods for assessing AT&T's market power also would be helpful. Finally, we recognize the difficulties of estimating AT&T's post-divestiture market power. We solicit data—but not mere speculation—relevant to the analysis of AT&T's market power from 1984 to, say 1990. Any data submitted should be accompanied by a description of the sources or methods relied on to develop the figures. Our goal here is not to obtain final empirical estimates of AT&T's future market power. Rather, this inquiry seeks to start to provide the basis for developing a methodology for collecting, organizing, and analyzing the available information relevant to this question.

50. Market power can be defined as "the ability to raise prices by restricting output."⁷⁰ It is difficult to establish an empirical estimate of the market power of a regulated firm.⁷¹ Regulation can be used to prevent a firm from restricting its output and thereby raising market prices. Cost-based rate regulation attempts to limit rates to the level which produces competitive profits. When its

prices are so regulated, a regulate firm would not find restricting its output to be profit maximizing, regardless of the absence or weakness of rivals. On the other hand, regulation can be used by a firm to gain market power by creating barriers to entry by rivals. The following analysis deals with options under which it can be assumed that regulation does not affect AT&T's market power. Three aspects of the empirical analysis of AT&T's future market power will be discussed—market share, entry and expansion of competitors, and profits.

51. A high share of a relevant market may indicate that the ability of the firm's competitors to respond by increasing their output when the firm cuts its output may be so limited that the firm's action will cause a decline in market output and rise in market prices.⁷² In order to draw an inference from market share to market power, the relevant market must encompass close demand and supply substitutes for the firm's products.⁷³ Close demand substitutes for one of AT&T's services include other services, supplied by AT&T or its rivals, to which a substantial number of potential customers of that service would turn. Close supply substitutes for one of AT&T's services include other services, supplied by AT&T's actual or potential rivals, produced with resources which could be used to produce that service.⁷⁴

52. Relevant markets have product and geographic dimensions. We ask for information which will help us delineate the relevant market(s) for assessing AT&T's power. To assist in the formulation of comments, the next paragraph presents a summary of the analysis of the relevant product and geographic markets used in *Competitive Carrier Rulemaking* for purposes of assessing the power of many of AT&T's

⁶⁹ H.P. Areeda & D. Turner, *Antitrust Law* 322 (1975); *Broadcast Music v. Columbia Broadcasting System*, 441 U.S. 1, 20 (1978) (holding that a price fixing arrangement that did not restrict output was not a *per se* violation of the antitrust laws). See *Competitive Carrier Rulemaking*, *supra* note 6, FCC 83-481, at 5-11. See also Landes & Posner, *Market Power in Antitrust Cases*, 94 Harv. L. Rev. 937 (1981) (market power is the ability "to raise prices above the competitive level without losing so many sales so rapidly that the price increase is unprofitable and must be rescinded"); *Valley Liquors, Inc. v. Renfield Importers, Ltd.*, 678 F.2d 742, 745 (7th Cir. 1982) (Monopoly profits do not decrease market output when the monopolist engages in perfect price discrimination).

⁷¹ See Landes & Posner, *supra* note 70, at 975-76; B. Owen & R. Braeutigam, *The Regulation Game* 1-36 (1978).

⁷² See, e.g., *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966); *Ron Tonkin Gran Turismo v. Fiat Distributors*, 637 F.2d 1376, 1387 (9th Cir.), *cert. denied*, 454 U.S. 831 (1981); *Broadway Delivery Corp. v. United Parcel Service of America*, 651 F.2d 122, 129 (2d Cir.), *cert. denied*, 454 U.S. 968 (1981); Landes & Posner, *supra* note 70, at 936.

⁷³ See, e.g., U.S. Department of Justice, *Merger Guidelines—1982*, 2 Trade Reg. Rpt. (CCH) para. 4500, at para. 4502; *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 394 (1956); *United States v. Columbia Steel Co.*, 334 U.S. 495, 510-11 (1948); Landes & Posner, *supra* note 70, at 944-52; F. Scherer, *Industrial Market Structure and Economic Performance* 60-61 (2d ed. 1980).

⁷⁴ See U.S. Department of Justice, *supra* note 73, at para. 4502 (close demand and supply substitutes can be identified by a response within one year to a five-percent relative increase in the price of one service). There is no widely-accepted, quantitative standard for market definition. Tariff restrictions can limit demand and supply substitutability.

⁶⁸ *Competitive Carrier Rulemaking*, *supra* note 6, 85 FCC 2d at 39.

rivals.⁷⁵ Comments on relevant markets should address the characteristics delineating the markets, not just the trade names of services in the markets.

53. The relevant product market in *Competitive Carrier Rulemaking* is all domestic, interstate interexchange telecommunications services. There is evidence that customers shift their usage among different services and transmission media in response to changes in their relative prices. Also, suppliers readily can shift their transmission and switching resources among types of services. Close demand and supply substitutability extends to voice, data, record, and video services, switched and private-line services, and terrestrial and satellite services. The relevant geographic market in that proceeding is nationwide (including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and other U.S. offshore points). AT&T's facilities are almost nationwide and, through alternate routing, AT&T can shift transmission capacity from one city-pair or area to another. Other carriers also have extensive networks with alternate routing capabilities. Satellite carriers readily can shift their capacity from one area to another, and terrestrial carriers readily can expand their service areas through new facilities, interconnection, or resale. In addition, many customers consider an interexchange carrier's ability to serve multiple geographic points and its prices for services to those points when choosing a supplier.

54. The actual or readily-available capacity of AT&T's competitors in the relevant market, not just their actual sales, poses a check on AT&T's ability to restrict output and thereby raise market prices.⁷⁶ To estimate the strength of this check, AT&T's market share can be calculated as, in the numerator, AT&T's actual sales in the relevant market and, in the denominator, AT&T's actual sales in the relevant market plus the capacity of its competitors to make sales in the relevant market. A consistent unit of measurement is needed for sales and capacity, such as dollars (revenues or revenue potential), equivalent voice-grade circuit miles, or simultaneous calls. We recognize that the use of facilities for multiple services and for service to multiple geographic points make measurement of output and capacity difficult. To some extent, the data obtained through Section 214

applications and the Commission's spectrum-allocation licensing may be useful here. The capacity of potential entrants is even harder to quantify. We seek guidance on how to identify likely potential entrants and how to estimate the competitive check they pose for AT&T.⁷⁷

55. Domestic, interstate resellers are part of the competitive check on AT&T, but the strength of this rivalry depends on AT&T's rate structure. The capacity of resellers can be expanded rapidly through the capacity of AT&T and other carriers. To reflect AT&T's ability to influence resellers' prices and to avoid double counting (e.g., domsats and domsat resellers), the capacity of AT&T's competitors can be limited to their own transmission facilities for purposes of computing AT&T's market share. Facilities-based competitors of AT&T include domsats, terrestrial common carriers, and private microwave and satellite systems.⁷⁸

56. Another factor relevant to the analysis of AT&T's market power is the entry and expansion of its competitors.⁷⁹ In an unregulated market, the success of new rivals and a firm's falling market share suggest that an existing firm lacks power or that its power is declining. New rivals can increase market output and check the ability of a firm to restrict its output and thereby raise market prices. The absence of entry does not show that an existing firm possesses market power; existing firms may be charging competitive prices because of competition among themselves or the threat of potential entry, and thereby make entry unattractive. While other common carriers have grown rapidly

over the past decade, at least part of their success is attributable to regulatory rules which are changing. See *MTS/WATS Market Structure*. Since the purpose of this market-power analysis is to gain insight into the strength of market forces under different regulatory options, it is difficult to interpret the significance of past entry. Still, such entry shows that barriers to entry and expansion have been reduced, especially for resale carriers and private microwave systems. Continuing entry and expansion under new regulatory practices may indicate that AT&T has not gained market power. There may be numerous large potential entrants in common carrier or private systems that further check AT&T's market power to some degree. The assignment of all currently-available orbital slots may limit possible future entry and growth of domsats,⁸⁰ subject to possible technological development and spectrum reallocation.

57. Finally, persistent supracompetitive profits indicate that an unregulated firm possesses market power.⁸¹ Evaluation of a firm's profits as supracompetitive must reflect the riskiness of the firm's activities and its ability to earn economic rents.⁸² The absence of such profits does not indicate the lack of power since the firm may be engaging in strategic behavior or simply not earning the profits that its market position would seem to make possible; the firm may be able to earn supracompetitive profits in the future. Regulation of AT&T has constrained its overall rate of return though at times AT&T has earned less than its authorized rate of return. The fact that in the past AT&T did not earn persistent supracompetitive profits is not empirical evidence that it would be powerless under less stringent regulation. However, future evidence that AT&T is earning persistent high profits may indicate that the prevailing regulation and certain options involving further relaxation of our regulatory scrutiny are undesirable at that time.

VII. Ordering Paragraphs

58. It is so ordered pursuant to Section 4(i), 4(j), 218, 303(g), and 404 of the Communications Act of 1934 that this

⁷⁵ Cases discussing the antitrust theory of potential competition include *United States v. Marine Bancorporation*, 418 U.S. 602 (1974); *United States v. Falstaff Brewing Corp.*, 410 U.S. 526 (1973); *BOC International v. FTC*, 557 F.2d 24 (2d Cir. 1977). See also W. Baumol et al., *Contestable Markets and the Theory of Industry Structure* (1982).

⁷⁶ In *United States v. AT&T*, *supra* note 1, 552 F. Supp. at 171, AT&T conceded that as late as 1981 its share of interexchange revenues was around 77 percent and estimates submitted by other parties were significantly higher, some contending that AT&T's market share exceeded ninety percent. See *Competitive Carrier Rulemaking*, *supra* note 6, FCC 83-481, at 26 n. 89.

⁷⁷ See, e.g., *United States v. FCC*, *supra*, 652 F.2d at 106; *In re IBM Peripheral EDP Devices Antitrust Litigation*, 481 F. Supp. 965, 981-82 (N.D. Cal. 1979), *off'd sub nom. Transatlantic Computer Co. v. IBM*, 898 F.2d 1377 (9th Cir. 1983); *Greyhound Computer v. IBM*, 559 F.2d 488, 496 n. 18 (9th Cir. 1979), *cert. denied*, 434 U.S. 1040 (1978); *Domestic Fixed-Satellite Transponder Sales*, *supra* note 2, at 1254; *Landes & Posner*, *supra* note 70, at 950-51; P. Areeda, *Antitrust Analysis* 20-22, 242-43 (3rd ed. 1981).

⁸⁰ See *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, *supra* note 2.

⁸¹ *Il P. Areeda & D. Turner*, *supra* note 70, at 331-41.

⁸² *Competitive Carrier Rulemaking*, *supra* note 6, FCC 83-481, at 6-10.

⁷⁵ Fourth Report, *supra* note 6, FCC 83-481, at 10-25.

⁷⁶ *Landes & Posner*, *supra* note 70, at 949.

inquiry is hereby instituted and that the Secretary shall cause this Notice to be published in the Federal Register.

59. It is further ordered that parties wishing to participate in this Inquiry shall submit comments to this Commission no later than February 1, 1984. Reply comments must be submitted no later than March 19, 1984.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FED. REG. 63-28710 Filed 11-7-83; 6:45am]

BILLING CODE 5712-01M

Notices

Federal Register

Vol. 48, No. 217

Tuesday, November 8, 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.

CIVIL AERONAUTICS BOARD

Bicoastal Air Service; Fitness Investigation; Prehearing Conference

[Docket 41679]

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on November 10, 1983 at 2:00 p.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned administrative law judge.

Dated at Washington, D.C., November 2, 1983.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 83-30187 Filed 11-7-83; 8:45 am]

BILLING CODE 6320-01-M

Agency Information Collection Activities Under OMB Review; Employee Protection Program

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of the collection of information in Part 314 of the Board's Economic Regulations which establishes an employee protection program under section 43 of the Airline Deregulation Act of 1978, Pub. L. 95-504.

DATED: October 28, 1983.

FOR FURTHER INFORMATION CONTACT:

Bernard Davis, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell (202) 673-5922

How often the collection of information must be filed: On occasion

Who is asked or required to report: Airline Employees

Estimate of number of annual responses: 32

Estimate of number of annual hours needed to complete the collection of information: 32

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-30188 Filed 11-7-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

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 summarized 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.

DATE: Comments on this application must be submitted on or before November 28, 1983.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 83-00028."

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) authorized the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III can be found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the issuance of Export Trade Certificates of Review," 48 FR 15937-10 (April 13, 1983).

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Carpenter Body Works, Inc.,
P.O. Box 128, Mitchell, Indiana 47446
Application No.: 83-00028
Date Received: October 19, 1983
Date Deemed Submitted: October 24,
1983

Members in Addition to Applicant: J.
Stephen Foddrill, Joseph H. Burton,
John A. Foddrill, Elva Morris, Robert
Speer, Donald Hordin, Dick O'Neil,
Linda Lucas, Ronald Langley, Robert
LaDow

Summary of Application: Carpenter
Body Works, Inc., an Indiana
corporation whose mailing address is
P.O. Box 128, Mitchell, Indiana 47446,
submitted an application seeking
certification for the following export
trade activities and methods of
operation for its export trade
worldwide.

A. Export Markets

The Applicant and its members intend
to market products and services
worldwide.

B. Export Trade

The Applicant and its members intend
to export transit coaches and bus
bodies. The Applicant and its members
further intend to provide all services
related to the sales and maintenance of
the applicant's products, including
marketing of the applicant's products
and providing technical assistance to
end-users or their representatives.

C. Activities/Methods of Operation

The Applicant and its members seek
to enter into exclusive and non-
exclusive agreements with suppliers of
goods and services for export, including
but not limited to transit coaches, bus
bodies, and components thereof. The
Applicant and its members propose to
enter into, and from time to time
terminate, exclusive and non-exclusive
agreements with distributors, agents,
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 may
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. 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

in order to ascertain the existence of,
prepare bids for, and share business
from foreign customers.

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: November 3, 1983.

Irving P. Margulies,
Deputy General Counsel.

[FR Doc. 83-30220 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-25-M

NASA; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to
Section 6(c) of the Educational,
Scientific, and Cultural Materials
Importation Act of 1966 (Pub. L. 89-651,
80 Stat. 897; 15 CFR Part 301). Related
records can be viewed between 8:30
a.m. and 5:00 p.m. in Room 1523, U.S.
Department of Commerce, 14th and
Constitution Avenue, NW., Washington,
D.C.

Docket No.: 82-00308. Applicant:
NASA, Goddard Space Flight Center,
Greenbelt, MD 20771. Instrument: Data
Processing Equipment. Manufacturer:
MacDonald Dettwiler & Associates, Ltd.,
Canada. Intended use: See notice at 48
FR 29036.

Comments: None received.

Decision: Approved. No instrument of
equivalent scientific value to the foreign
instrument, for such purposes as it is
intended to be used, was being
manufacture in the United States at the
time the foreign system was ordered
(February 4, 1981).

Reasons: The application is a
resubmission of Docket Number 82-
00024 which was denied without
prejudice to resubmission on April 16,
1982. The foreign instrument system
provides the capabilities to: (1)
Demultiplex data from the Landsat-D
Multispectral Scanner (MSS); (2)
Reformat and edit Landsat-D MSS data;
(3) Visually display Landsat-D MSS
data. NBS advises in its memorandum
dated September 14, 1983 that: (1) The
capabilities of the foreign instrument
system described above are pertinent to
the applicant's intended purpose and (2)

it knows of no domestic system of
equivalent scientific value to the foreign
system for the applicant's intended use,
nor does it know of any domestic
manufacturer that could have made
such an integrated system available
promptly and without impairing the
intended research program.

We know of no other instrument
system or apparatus of equivalent
scientific value to the foreign instrument
system which was being manufactured
in the United States at the time the
foreign system was ordered.

(Catalog of Federal Domestic Assistance
Program No. 11.105, Importation of Duty-Free
Educational and Scientific Material)

Frank W. Creel,

Acting Director, Statutory Import Programs
Staff.

[FR Doc. 83-30180 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-05-M

President's Export Council; Open Meeting

A meeting of the President's Export
Council's Incentives/Disincentives
Subcommittee will be held November
21, 1983, 1:00 p.m., at the Herbert C.
Hoover Building, Room 4830, 14th Street
and Constitution Avenue, N.W.,
Washington, D.C. The Council's purpose
is to advise the President on matters
relating to United States export trade.

Agenda: Topics to be discussed will
include industrial targeting, small
business export financing, copyright,
patent, and trademark infringement
problems, and other topics of interest to
the Subcommittee members.

The meeting will be open to the public
with a limited number of seats
available. For further information or
copies of the minutes contact Suzanne
Sakolsky (202) 377-1125, Room 3213,
U.S. Department of Commerce,
Washington, D.C. 20230.

Dated: November 3, 1983.

Henry Misisco,

Acting Director, Office of Planning and
Coordination.

[FR Doc. 83-30181 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-05-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards,
Commerce.

ACTION: Notice of public hearing
regarding fire extinguishers.

SUMMARY: The National Bureau of Standards will hold an informal public hearing on November 29, 1983, to provide interested parties an opportunity to express their views regarding the preliminary finding of need to accredit laboratories that test portable fire extinguishers. The preliminary finding was published by the National Bureau of Standards in the *Federal Register* on October 5, 1983 (48 FR 45453-45455).

DATE: The hearing will be held on Tuesday, November 29, 1983, from 1:00 p.m. to 5:00 p.m. Notifications of desire to testify, including statements intended for presentation, should be filed by November 22, 1983. Each person who plans to testify at the hearing should send one copy of his or her statement to Mr. John Locke, Manager, Laboratory Accreditation, at the address shown for him in this notice.

Place: The hearing will be held in Room A340, Metrology Building, National Bureau of Standards, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: John Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Technology Building, Room B141, Washington, DC 20234; (301) 921-3431.

SUPPLEMENTARY INFORMATION: On October 5, 1983, the National Bureau of Standards published in the *Federal Register* a preliminary finding of need to accredit laboratories that test portable fire extinguishers (48 FR 45453-45455). That notice established a 60-day comment period and indicated that written comments were due on or before December 5, 1983. That notice also established a 15-day period for making a request for an informal hearing before October 20, 1983. Two such requests were received. One was a letter of October 14, 1983, from Mr. John H. Addington of the Fire Equipment Manufacturer's Association, Inc. (FEMA) and the other was a letter of October 17, 1983, from Mr. G. T. Castino of Underwriters Laboratories, Inc. As indicated earlier in this notice the National Bureau of Standards, in response to these requests, will hold an informal public hearing on November 29, 1983, at the time and place stated for the purpose of giving all interested parties an opportunity to comment on the preliminary finding of need.

The following procedures are established for the informal hearing:

1. **Purpose.** The purpose of the informal public hearing is to provide all interested persons with an opportunity

to express their views and concerns regarding the preliminary finding of need to accredit laboratories that test portable fire extinguishers.

2. **Conduct of Hearing.** (a) This hearing shall be an informal nonadversary proceeding at which there will be no formal pleadings, adverse parties or cross examination. Witnesses should submit a written statement of their presentation for the record as indicated above.

(b) The presiding officer shall have the right to schedule the witnesses, to apportion in an equitable manner the time available to each witness for making presentations, and to terminate or shorten the presentation of any witness when, in the presiding officer's opinion, such presentation is repetitive of information previously presented or not relevant to the purposes of the hearing.

(c) The presiding officer and other members of the Department of Commerce hearing panel shall have the right to question witnesses on their statements and other matters related to the preliminary finding of need.

(d) The presiding officer shall have the right to exercise such authority as may be necessary to insure the equitable and efficient conduct of the hearing and to maintain order.

3. **General Provisions.** (a) This informal hearing shall be open to members of the public whether or not such members wish to testify at the hearing.

(a) A written transcript of the hearing will be made. A copy of the transcript will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6622, Main Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. 20230. Information concerning the availability of the transcript will be announced at the hearing.

(c) Copies of all written materials and comments on the preliminary finding will be made available for inspection and copying in the Central Reference and Records Inspection Facility, identified above.

Dated: November 1, 1983.

John W. Lyons,

Acting Director, National Bureau of Standards.

[FR Doc. 83-30145 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammal Permits; Receipt of Application for General Permit; North Pacific Fishing Vessel Owners' Association of Seattle

Notice is hereby given that the North Pacific Fishing Vessel Owners' Association of Seattle, Washington has applied for general permits in the following categories:

Category 1: Towed or Dragged Gear

Category 3: Encircling Gear, Purse

Seining not Involving the Intentional Taking of Marine Mammals

Category 4: Stationary Gear

Category 5: Other Gear

to take marine mammals incidental to the pursuant to commercial fishing operations within the U.S. fishery conservation zone in the Gulf of Alaska and Bering Sea as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

The applications request the following levels of take:

Category I—1,000 northern sea lions, 10 northern fur seals and 10 harbor seals

Category III—500 northern sea lions, 5 northern fur seals and 200 harbor seals

Category IV—20 northern sea lions, 5 northern fur seals and 5 harbor seals

Category V—1,000 northern sea lions, 10 northern fur seals and 1,800 harbor seals.

The applications are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1868, Juneau, Alaska 99802.

Interested parties may submit written views on these applications within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: November 2, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-30156 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service**Intent to Grant Exclusive Patent License; G. O. Searle & Co.**

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to G. O. Searle & Company, having a place of business at Skokie, Illinois 60076, an exclusive right to manufacture, use and sell products embodied in the invention, "(±) 3-Deazaaristeromycin and Uses," U.S. Patent 4,386,093 [dated May 31, 1983]. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Dated: November 1, 1983.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 83-30179 Filed 11-7-83; 8:45 am]

BILLING CODE 3410-04-M

Intent To Grant Exclusive Patent License; Ventec Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Ventec Laboratories, Incorporated, having a place of business at Mt. Pleasant, Michigan, an exclusive right to manufacture, use and sell products embodied in the invention, "Detection of Malignant Lesions of the Oral Cavity Utilizing Toluidine Blue Rinse," U.S. Patent 4,321,251 (issued March 23, 1982). The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and

argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Dated: November 2, 1983.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 83-30180 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION**Chicago Mercantile Exchange; Application for Designation To trade Options on Deutsche Mark Futures Contracts**

AGENCY: Commodity Futures Trading Commission.

ACTION: Correction.

SUMMARY: This document corrects the notice of availability of the terms and conditions of the Chicago Mercantile Exchange application to trade options on Deutsche mark futures contracts, which was published on October 28, 1983 (48 FR 49905), with respect to the effective date of the new rule which allows each board of trade to be designated as a contract market for either two options on futures contracts, two options on physical commodities or one option on a futures contract and one option on a physical commodity.

FOR FURTHER INFORMATION CONTACT: Eugene Moriarty, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254-6990.

SUPPLEMENTARY INFORMATION: The correction to be made is on page 49905, column 3, line 29, changing the effective date to October 29, 1983.

Because of the effective date of Rule 33.4(a)(6) was October 29, 1983 and not October 28, 1983, the CME's application for designation as a contract market in Deutsche mark options was officially filed on that date. Accordingly, the thirty day comment period for the Chicago Mercantile Exchange application to trade options on Deutsche mark futures contracts will now expire on November 29, 1983 to provide the full thirty day comment period from the date of official filing.

Issued in Washington, D.C. on November 2, 1983 by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-30152 Filed 11-7-83; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Advisory Committee on Women in the Services (DACOWITS); Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., 6 December 1983 in MRA&L Conference Room #3E794, The Pentagon, and from 9:30 a.m. to approximately 12:00 noon, 7 December 1983 in MRA&L Conference Room #3E794, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the recommendations/requests for information/continuing concerns made at the 1983 Fall Meeting, discuss current issues relevant to women in the Services, and plan the itinerary/program for the next Semiannual Meeting scheduled for 29 April-3 May 1984 in Washington, D.C.

Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the Meeting must contact Captain Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs, and Logistics), Room 3D769, The Pentagon, Washington, D.C. 20301, telephone (202) 697-2122 no later than 23 November 1983.

Dated: November 3, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-30201 Filed 11-7-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Fire Support for Amphibious Warfare; Advisory Committee Meeting

The Defense Science Board Task Force on Fire Support for Amphibious Warfare will meet in closed session on December 12-13, 1983 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering

on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on December 12-13, 1983 the Task Force will review their findings on the basic requirements for fire support during amphibious warfare operations and discuss the preparation of their final report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1976), and that accordingly these meetings will be closed to the public.

Dated: November 3, 1983.

M. S. Healy,

*OSD Federal Register Liaison Officer,
Washington Headquarters Service,
Department of Defense.*

[FR Doc. 83-30200 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

Tuesday, 6 December 1983, Plaza West,
Rosslyn, VA

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on reconnaissance requirements.

Dated: November 3, 1983.

M. S. Healy,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 83-30199 Filed 11-7-83; 8:45 am]

BILLING CODE 3510-01-M

Establishment of the DOD Commission on Beirut International Airport (BIA) Terrorist Act, October 23, 1983

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the DoD Commission on Beirut International Airport (BIA) Terrorist Act, October 23, 1983, has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The Secretary of Defense has directed that this Commission make a thorough investigation into all the circumstances connected with the attack, and report to him as soon as possible its findings of fact, and opinion, relating to the attack, the Rules of Engagement then in force, the adequacy of security measures in place at the time of the explosion, and the adequacy of security measures subsequently established.

The Commission will serve the public interest by reviewing the adequacy of security measures then in place, and recommending changes if necessary.

The 15-day timely notice requirement has been waived by the Committee Management Secretariat, GSA, in order that the Commission begin its deliberations as soon as possible.

Dated: November 4, 1983.

M. S. Healy,

*OSD Federal Register Liaison Officer,
Washington Headquarters Services,
Department of Defense.*

[FR Doc. 83-30286 Filed 11-7-83; 8:45 am]

BILLING CODE 3010-01-M

Department of the Air Force

Community College of the Air Force (CCAF Advisory Committee); Meeting

The Community College of the Air Force will hold a meeting on November 22, 1983 at 8:30 a.m. in the Conference Room, Number 121, Building 836, located at Maxwell For Force Base, Montgomery, Alabama.

The meeting is open to the public.

Agenda items include: State of the College, Skilled Enlisted Reserve Training Act, Curriculum, Reaffirmation, Affiliation, Computer, Academic Programs Department Briefing, and Student Progress Report Briefing.

For further information contact Lieutenant Colonel James H. Conely, (205) 293-7937, Community College of the Air Force, Maxwell Air Force Base, Alabama 36112.

Darwin W. Berg,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 83-30357 Filed 11-7-83; 9:47 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Revised Meeting

In accordance with section 252(c) (1) (A) (i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c) (1)

(A) (ii)), the following revised meeting notice is provided:

A joint meeting of Subcommittees A and C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on November 7, 1983, at the offices of Ente Nazionale Idrocarburi, Piazza Enrico Mattei, Rome, Italy, beginning at 1:30 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. legislation and Plan of Action.
3. Application for legal clearance under the European Economic Community Treaty.
4. Future work program.

Notice of this meeting originally was published in the *Federal Register* on November 1, 1983, (48 FR 50390). This revised notice is given to reflect the addition of the third agenda item, which the Commission of the European Communities has just requested be considered at the meeting of Subcommittees A and C.

As permitted by Section 5(c) (2) of the Voluntary Agreement and Plan of Action to Implement the International Energy Program the Secretary of Energy has approved the Submission of the notice of this revised agenda item, less than 14 calendar days in advance of the date of the meeting.

In addition, as permitted by 10 CFR 209.32, the usual 7-day period for publication of notices of meetings in the *Federal Register* has been shortened because an unanticipated change in the meeting agenda prevented processing in sufficient time to provide such notice.

As provided in section 252(c) (1) (A) (ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C. November 4, 1983.

Craig S. Bamberger,

Assistant General Council, International Trade and Emergency Preparedness.

[FR Doc. 83-30338 Filed 11-4-83; 4:03 pm]

BILLING CODE 6450-01-M

Prepare Floodplain/Wetlands Assessment—Forest Management at the Savannah River Plant (SRP), Aiken, SC

AGENCY: Department of Energy.

ACTION: The Department of Energy (DOE) is initiating preparation of a floodplain/wetlands assessment for the continuing forest management activities at SRP.

Background Information

The United States Forest Service (USFS), under an interagency agreement

with DOE, manages SRP forest resources. Forest management includes surveys, forest management site preparation, planting, seeding, prescribed burning, fertilization, harvesting, temporary road and bridge construction and reconstruction, wildlife habitat improvement, and soil reclamation.

Following issuance of Executive Orders 11988 and 11990, DOE established regulations, "Compliance with Floodplain/Wetlands Environmental Review Requirements", (10 CFR Part 1022) which require preparation and distribution for public comment of a floodplain/wetlands assessment for DOE actions impacting floodplain/wetlands areas. In accordance with 10 CFR Part 1022, DOE will prepare and distribute an assessment to evaluate impacts of floodplain/wetland areas expected to result from ongoing forest management activities. Topics to be covered in the assessment include ecological impacts, soils, water quality, socioeconomic conditions, etc. This public notice is being made to solicit public comment on the preparation of an assessment which will provide an evaluation of the SRP forest management activities in floodplain/wetlands areas. Following completion of the assessment, a statement of findings, concerning both availability of practicable alternatives to SRP forest management activities located in floodplain/wetlands areas and the incorporation of mitigating measures in those activities, will be published in the *Federal Register*.

Alternatives

The floodplain/wetlands assessment will consider the following alternatives:

1. Continue Existing Activities—Evaluations would be presented for the impacts of continuing existing forest management practices including floodplain/wetlands impact mitigation measures.

2. Management Alternatives—Evaluations would be presented for the impacts resulting from having different management practices for floodplain/wetlands areas. For example, the rotation period could be altered for floodplain/wetlands areas.

3. No action Alternative—Evaluations would be presented for the impacts of disallowing entry or forest resource management in floodplain/wetlands areas.

DATE: Comments received on or before 30 days after this publication will be considered in preparing the floodplain/wetlands assessment. If you do not wish to provide input for the preparation of the assessment but wish to receive a copy of the assessment, please provide a written request to the address listed below.

ADDRESS: Input for the preparation of the floodplain/wetlands assessment and requests for copies of the assessment should be sent to: Grover A. Smithwick, Director, Office of Environment, Savannah River Operations Office, Department of Energy, P.O. Box A, Aiken, SC 29801.

Dated: October 28, 1983.

William A. Vaughan,
Assistant Secretary, Environmental
Protection, Safety, and Emergency
Preparedness.

(FR Doc. 83-30217 Filed 11-7-83; 8:45 am)

BILLING CODE 6450-01-M

Economic Regulatory Administration

(ERA Docket No. 83-CERT-317)

U.S. Aluminum Corp.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of this application, along with pertinent information contained in the application, was published in the *Federal Register* and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	Federal Register notice of application
U.S. Aluminum Corp., Marietta, Pa., Marietta Plant	Sept. 29, 1983	83-CERT-317	48 FR 46837, Oct. 14, 1983

The ERA has carefully reviewed the above application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted the certification to the Federal Energy Regulatory Commission.

Issued in Washington D.C., on November 2, 1983.

Robert L. Davies,

Director, Fuels Conversion Division, Office of Fuels Programs, Economic Regulatory Administration.

(FR Doc. 83-30216 Filed 11-7-83; 8:45 am)

BILLING CODE 6450-01-M

Energy Information Administration

Request for Comments on the Industrial Energy Conservation Program Reporting Forms, CE-189P, C, and S

AGENCY: Energy Information Administration, DOE.

ACTION: Request for Comments on the Industrial Energy Conservation Program Reporting Forms, CE-189P, C, and S.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Energy (DOE), through its Energy Information Administration (EIA), conducts a consultation program to

provide the general public with an opportunity to comment during the early development stage of new or revised reporting forms. This program helps ensure that requested data can be provided in the desired format, report burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time, EIA requests comments on the Industrial Energy Conservation Program Reporting forms. The forms are described in the Supplementary Information Section of this Notice. Interested persons are asked to review the form and its instructions and provide comments to the information contact described below.

DATES: Written comments must be submitted on or before December 8, 1983.

ADDRESS: Comments should be sent to Tyler E. Williams, Jr., Integrated Energy Systems Branch, Division of Improved Energy Productivity, Conservation and Renewable Energy, Room 5G-063, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Edna Jones, Integrated Energy Systems Branch, Division of Improved Energy Productivity, Conservation and Renewable Energy, Room 5G-063, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252-2455.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comment Procedures

I. Background

The Department of Energy (DOE) issued regulations in 10 CFR Part 445 (45 FR 10194, February 14, 1980) which set forth the requirements of DOE's Industrial Energy Conservation Program, as established by Part E of Title III of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619). These regulations, in part, require certain industrial corporations to file reports on energy consumption and conservation and, if appropriate, recovered materials utilization directly with DOE or, if exempted, with sponsors of DOE-approved adequate reporting programs.

Forms CE-189P, CE-189C, and CE-189S were implemented for the collection of plant, corporate, and sponsor data, respectively, on industrial energy efficiency and utilization of energy-saving recovered materials under DOE's Industrial Energy Conservation Program. These forms are for (1) planting reporting to corporations required to report under the program (identified corporations); (2) aggregated corporate reporting by identified corporations to DOE or DOE-approved third-party sponsors; and (3) third-party sponsor reporting to DOE. These forms have remained unchanged since inception, with the most recent Office of Management and Budget approval having expired in September 1983.

II. Comment Procedures

DOE's Energy Information Administration (EIA) invites the public to provide comments on the forms within 30 days of the date of publication

of this notice. The following general guidelines are provided to assist in the preparation of responses.

As a potential data provider:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for computation, preparation, and administrative review, will it take your firm to complete and submit the forms—including time to design and implement ADP processing programs?

E. What is the estimated cost of completing these forms, including direct and indirect costs associated with the data collections?

F. How can the forms be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data?

H. The Department especially desires comments regarding (1) the retention period for those records at plant, and at corporate levels and, (2) ways in which the narrative portion can more effectively provide information on the most significant conservation achievements of individual corporations and industrial trade association corporate respondents.

As a potential data user:

A. Can your company analysts use data at the levels of detail indicated on the forms?

B. For what purposes would you use these data? (Be specific)

C. How could the forms be improved to better meet your specific data needs?

D. Are there alternative sources of data and do you now use them? What are their deficiencies?

Comments submitted in response to this Notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, D.C. November 1, 1983.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 83-30215 Filed 11-7-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER83-726-000]

Boston Edison Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, and Establishing Hearing Procedures

Issued October 31, 1983.

On August 30, 1983, Boston Edison Company (Edison) tendered for filing an unexecuted service agreement¹ applicable to transmission service to be provided to the Town of Norwood, Massachusetts (Norwood), pursuant to Edison's firm transmission tariff, Original No. 4.² The transmission tariff was filed pursuant to the terms of a settlement agreement between Edison and the Towns of Norwood, Concord, and Wellesley, Massachusetts which resolved issues pending before this Commission, the United States District Court for the District of Massachusetts, and the United States Court of Appeals for the First Circuit. The settlement was approved by this Commission in Docket Nos. E-7738, *et al.*, on June 26, 1980.

Norwood has entered into an agreement to purchase 40% of its firm power and energy needs from New England Power Company (NEP) effective November 1, 1983, and the associated transmission is to be provided by Edison. Accordingly, the company requests a November 1, 1983 effective date for its current filing. Edison further states that the rate applicable to Norwood is the same as the rate previously accepted by the Commission on February 20, 1981, as part of a settlement between Edison and NEP in Docket No. ER80-368-000.

Notice of Edison's filing was published in the *Federal Register*,³ with comments due on or before September 26, 1983. A timely motion to intervene was filed by Norwood. Norwood requests a one day suspension of Edison's filing, asserting that the settlement agreement in Docket Nos. E-7738, *et al.*, expressly provided that Norwood may contest the applicability and terms of Edison's transmission tariff.⁴ Norwood challenges the

¹ On September 7, 1983, Edison submitted revised copies of the service agreement to include correct volume numbers.

² Designated as: *Boston Edison Company* (1) Service Agreement under FERC Electric Tariff, Original Volume No. 4

(2) Supplement No. 1 to Service Agreement under FERC Electric Tariff, Original Volume No. 4 [Purchase Schedule]

³ 48 FR 43080 (September 21, 1983).

⁴ Article VII of the settlement agreement provided that: Edison will furnish firm and non-firm

Continued

proposed rate level as well as certain terms and conditions contained in the tariff.⁵

On October 11, 1983, Edison filed an answer to Norwood's motion to intervene. While the company does not oppose the Town's request to intervene, it does oppose the requests for a one day suspension and initiation of hearings concerning the company's filing. In support of its position, Edison alleges that the Commission lacks the authority to order refunds in the instant case. In the event that the Commission does possess the authority to order refunds, the company states that policy and equitable considerations nonetheless militate against the imposition of a refund liability. Finally, Edison disputes the specific allegations contained in Norwood's pleading. In particular, the company alleges that many of the issues raised in the Town's motion to intervene were resolved in prior Edison proceedings.⁶

Discussion

Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, (18 CFR 385.214), Norwood's timely motion to intervene serves to make it a party to this proceeding.

As indicated, Edison alleges that the Commission lacks the authority to suspend the proposed rates in the instant case. According to the company, the service agreement filed in this proceeding does not contain a new rate or a rate increase; rather, it simply applies an existing tariff to a new customer. This, Edison alleges, does not constitute a change or increase in rates. In support of its claim, the company cites the Commission's order in *Boston Edison Co.*, Docket Nos. E-8187, *et al.*, accepting its transmission tariff as applied to all potential customers except NEP. 9 FERC ¶61,054 (1979).

We disagree with Edison's view that the instant filing can not, as a matter of

law, be suspended. Section 35.1(c) of the Commission's regulations states that:

A rate schedule applicable to a transmission or sale of electric energy which proposes to supersede, supplement, cancel, or otherwise change any of the provisions of a rate schedule * * * (such as providing for other or additional rates, charges, classifications or services, or rules, regulations, practices or contracts for a particular customer or customers) shall be filed as a change in rate.

Clearly, the addition of Norwood as a customer taking service under a previously filed tariff constitutes a "change in rates" to Norwood under section 205 of the Federal Power Act to which renewed Commission scrutiny and a refund liability may attach. *Municipal Electric Utilities Association of Alabama v. FPC*, 485 F.2d 967 (D.C. Cir. 1973). Indeed, in its transmittal letter accompanying the instant filing, the company, in stating the reason for the November 1, 1983 requested effective date, characterizes the filing as a "rate Schedule change." Nor does the Commission's order in Docket Nos. E-8187, *et al.*, support Edison's position. In that proceeding, Norwood intervened and contested the terms of a proposed settlement agreement between Edison and NEP and the transmission tariff filed concurrently with the settlement. While the Commission accepted the transmission tariff for filing and suspended its effectiveness for one day, nothing in the Commission's order in Docket Nos. E-8187, *et al.*, abrogated or limited the Commission's authority to suspend the applicability of Edison's transmission tariff when applied under a new service schedule to another customer at a later time. Accordingly, Edison's argument that the Commission cannot suspend the instant filing is rejected. Furthermore, for the reasons discussed below, we are not persuaded that we should exercise our discretion not to suspend.

Our review of Edison's filing and the issues raised by Norwood indicates that the proposed change in rates has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the submittal for filing and suspend its operation as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶61,189 (1982), we explained the Commission's suspension policy and noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the rates may be unjust and unreasonable but may not produce substantially excessive revenues as defined in *West Texas*. Our review of Edison's filing

indicates that it may not yield excessive revenues. However, we note that the particular rates, terms, and conditions of the tariff at issue have not been litigated in other dockets before this Commission⁷ and that Norwood intervened in these other dockets to contest the rates and terms of the tariff. In light of the fact that Edison is proposing to apply the rates and terms of its transmission tariff to Norwood for the first time, and in view of the issues raised by Norwood, we believe that further investigation is warranted. However, given our preliminary conclusion as to rate level and the fact that Norwood seeks to have the new service available as promptly as possible, a one day suspension is appropriate. Accordingly, we shall accept Edison's submittal for filing and suspend it for one day, to become effective on November 2, 1983, subject to refund.

With respect to Edison's allegation that certain of the issues raised in Norwood's pleading were resolved in prior rate cases, we agree that relitigation of principles previously established should not be permitted, absent a showing of changed circumstances. See *Louisiana Power & Light Co.*, Opinion No. 110, 14 FERC ¶61,074 (1981). The precise scope of the instant proceeding, however, is a matter which we believe is most appropriately determined by the presiding judge.

The Commission orders:

(A) Edison's proposed rates are hereby accepted for filing and suspended for one day, to become effective on November 2, 1983, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Edison's rates, terms and conditions of transmission service to Norwood.

⁷In addition to Docket Nos. E-8187, *et al.*, Edison's transmission tariff, insofar as it applied to NEP, was the subject of proceedings in Docket No. ER80-388-000. That docket was also settled by the parties. With respect to Norwood, the Commission granted the town an opportunity to contest the transmission tariff in Docket Nos. ER79-218 and ER79-217; these dockets were also subsequently settled, however.

transmission services pursuant to its firm and non-firm transmission tariffs, as they are in effect from time to time under the Federal Power Act. The parties have been unable to agree on the price and the terms and conditions for the provision of transmission services, and the Towns reserve their rights, at any time after July 1, 1980, to contest the applicability and provisions of the said tariffs.

⁵Specifically, Norwood alleges that the rate level is discriminatory; the company's higher rate for firm transmission service than for non-firm service is unjustified; the inclusion of a 100% ratchet in Edison's tariff is inappropriate; and the use of a kva rate is inappropriate. In addition, Norwood contests provisions of the tariff relating to additional charges for "adverse financial impacts," line extension charges, and cancellation of service.

⁶See Opinion No. 53, 8 FERC ¶1,077 (1979); Opinion No. 809, 59 FPC 319 (1977); Opinion No. 720, 53 FPC 1575 (1975).

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. This conference shall be held for purposes of establishing a procedural schedule, including a date for the submittal of testimony and exhibits by Edison. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of Practice and Procedure.

(D) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission,
Kenneth F. Plumb,
Secretary.

[FR Doc. 83-30154 Filed 11-7-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-652-000]

**Niagara Mohawk Power Corporation;
Order Accepting for Filing and
Suspending Rates Granting
Interventions, Ordering Summary
Disposition, and Establishing
Procedures**

Issued October 31, 1983.

On July 29, 1983, Niagara Mohawk Power Corporation (Niagara) filed a proposed increase in rates to the Power Authority of the State of New York (PASNY) for firm and interruptible transmission to PASNY's municipal, cooperative, and industrial customers. Energy is supplied to these customers from PASNY's St. Lawrence, Niagara, and Fitzpatrick Projects and is delivered by Niagara at high and low voltage levels. On September 2, 1983 Niagara notified the Commission that it has discovered an error in its original cost of service which overstated the company's revenue requirements (the company had neglected to reflect an interest expense tax deduction). Niagara therefore asked that substitute tariff sheets, reflecting a smaller rate increase, and revised cost of service exhibits be accepted for filing in lieu of the company's original submittal.¹ Niagara requests that the amended rates be made effective as of November 1, 1983, the date originally requested.

The proposed rates (Schedule A rates), as revised by Niagara, would

increase revenues by approximately \$1.7 million (13.7%) for the twelve-month period (Period II) ending March 31, 1984. The rates reflect the inclusion in rate base of 50% of Niagara's CWIP (other than pollution control and fuel conversion facilities). Separate rates have been submitted for firm and interruptible transmission services above and below 50 kV. In addition, Niagara has proposed alternative interim rates (Schedule B rates) for service below 50 kV.² In the event that the Commission suspends the Schedule A rates for the below 50 kV customers for five months, Niagara seeks to charge the lower Schedule B rates during the suspension period.

Notices of Niagara's original and amended filings were published in the **Federal Register**.³ A timely protest and motion to intervene was filed by the Municipal Electric Utilities Association of New York (MEUA) and PASNY filed a timely motion to intervene. MEUA also timely filed an amended intervention and protest. Niagara responded to MEUA's original protest on September 6, 1983.

PASNY has raised no substantive issues. MEUA, however, requests a hearing and identifies a number of cost of service issues in connection with Niagara's filing.⁴ MEUA contends that the Commission should suspend Niagara's proposed rates for five months.

In its amended motion to intervene, MEUA recognizes that Niagara's revised submittal attempted to correct for the company's earlier omission of the long-term debt interest tax deduction in computing the cost of service. However, MEUA contends that Niagara should have but still has not taken into account the tax deduction for interest on short-term debt in computing its cost of service.

In response to MEUA's original intervention, Niagara opposed the contention that a five month suspension is required. Niagara also disputed a

¹ The Schedule B rates would reduce the Schedule A rate increase by about \$175,000.

² 48 FR 36326 (August 10, 1983); 48 FR 42856 (September 20, 1983).

³ These issues include: (1) Calculation of the monthly peak load demands on Niagara's system by the municipal customers; (2) inclusion in Niagara's cost of service of transmission plant performing a distribution function; (3) allocation of working capital claimed in Niagara's cost of service; (4) allocation of deferred income taxes; (5) calculation of interest deduction for Federal income taxes; (6) revenue credits for PASNY wheeling; (7) revenue credits for New York Power Pool revenues; (8) rate of return on equity; (9) inclusion of excessive CWIP in rate base; (10) projected peak demands for Period II; (11) assumed inflation rate for Period II; and (12) inclusion of step-up transformers in rate base for transmission service.

number of MEUA's cost of service challenges and indicated, in particular, that its revised filing of September 2, 1983, mooted MEUA's objection to the company's prior failure to reflect an interest deduction in the cost of service tax calculation. However, by letter dated October 18, 1983, Niagara advised the Commission that in correcting its tax computations, it had in fact still neglected to account for short-term debt interest. The company states that the associated cost of service adjustment is readily ascertainable, will be made voluntarily by the company, and should not be considered as a factor in the Commission's suspension review.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make MEUA and PASNY parties to this proceeding.

Our examination of Niagara's filing reveals that Niagara has included an amount of CWIP in rate base that results in an increase in rates in excess of the six percent permitted by § 35.26(d)(i) of the Commission's regulations. The CWIP-related increase is about 6.4% of the superseded rates. We shall therefore order summary disposition with regard to this aspect of Niagara's filing, but we shall not require Niagara to refile its rates or supporting cost of service statements at this time inasmuch as it appears that the impact of the summary disposition on Niagara's cost of service is insubstantial.

With respect to the question of short-term debt interest raised by the intervenors and subsequently addressed by Niagara, it appears to the Commission that the associated cost of service adjustment should have only a nominal dollar effect given the effects of tax normalization. Because we question the revenue impact figure presented by MEUA, we believe that Niagara should defer its voluntary refiling until the parties and the staff have had an opportunity to discuss this issue at the initial prehearing conference in this docket. Any adjustment later filed by Niagara may then be made effective as of the effective dates specified for the originally filed rates.

Our preliminary review of Niagara's filing and the pleadings indicates that the rates proposed in this docket have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the

¹ See Attachment for rate schedule designations.

proposed rates for filing, and we shall suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we indicated that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not produce substantially excessive revenues, as defined in *West Texas*. Because our preliminary review indicates that Niagara's proposed rates for firm and interruptible service above 50 kV may not yield excessive revenues, after allowing for the effects of summary disposition, we shall suspend those rates for one day from the proposed effective date,⁵ to become effective, subject to refund, on November 2, 1983. With respect to both the Schedule A and Schedule B rates for service below 50 kV, preliminary review suggests that, after summary disposition, the proposed rates may yield substantially excessive revenues. Accordingly, we shall suspend the Schedule A rates for service below 50 kV for five months, to become effective, subject to refund, on April 1, 1984. Since we would also suspend the Schedule B rates for five months and Niagara sought to collect the Schedule B rates only if allowed to do so at an earlier date, we shall deem the Schedule B rates to have been withdrawn.

The Commission orders:

(A) Summary disposition is hereby ordered with respect to Niagara's inclusion of excessive CWIP in rate base. This determination shall be reflected in any compliance cost of service and rates at the conclusion of this proceeding.

(B) Niagara's proposed rates for firm and interruptible transmission service above 50 kV and its Schedule A rates for firm and interruptible transmission service below 50 kV are hereby accepted for filing (as amended by the company's September 2, 1983 submittal); the rates for service above 50 kV are suspended for one day from the proposed effective date to become effective, subject to refund, on November 2, 1983, and the Schedule A

rates for service below 50 kV are suspended for five months to become effective, subject to refund, on April 1, 1984. Niagara's alternative Schedule B rates are deemed withdrawn.

(C) pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

Kenneth F. Plumb,
Secretary.

Niagara Mohawk Power Corporation;
Docket No. ER83-652-000

Rate Schedule Designations

Filed: July 29, 1983

Other Party: Power Authority of the
State of New York

Designations	Descriptions
(1) Supplement No. 1 to Supplement No. 1 to Supplement No. 2 to Rate Schedule FPC No. 18.	Rate Schedule A
(2) Supplement No. 1 to Supplement No. 1 to Supplement No. 2 to Rate Schedule FPC No. 18.	Do.
(3) Supplement No. 1 to Supplement No. 1 to Supplement No. 2 to Rate Schedule FPC No. 95.	Do.
(4) Supplement No. 1 to Supplement No. 1 to Supplement No. 2 to Rate Schedule FPC No. 109.	Do.

[FR Doc. 83-30215 Filed 11-7-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-007]

Energy Conservation Program for Consumer Products; Withdrawal of Petition From Honeywell, Inc., for Waiver of Furnace Test Procedures

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Withdrawal of petition.

SUMMARY: Notice is given of the withdrawal of the Petition submitted by Honeywell, Inc. for Waiver from DOE's test procedures for furnaces. [Case No. F-007]. Honeywell sought the use of modifications to the existing DOE furnace test procedures for testing furnaces equipped with a Honeywell "Integrated Control System" (ICS).

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-112.1, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-9513.

SUPPLEMENTARY INFORMATION: On May 13, 1983, DOE published in the *Federal Register* a Petition for Waiver from Honeywell, Inc. (Honeywell) (48 FR 21629).

Honeywell's petition requested that it be allowed to use an alternate test procedure in its testing of furnaces equipped with a Honeywell "Integrated Control System" (ICS). By letter dated August 8, 1983, Honeywell withdrew its petition. Today's notice informs all interested parties of Honeywell's withdrawal of petition.

Issued in Washington, D.C., October 21, 1983.

Howard S. Coleman,

Principal Deputy Assistant Secretary
Conservation and Renewable Energy.

[FR Doc. 83-30214 Filed 11-7-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42037; T3H-FRL 2437-4]

Alkyltin Compounds; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

⁵ We conclude that the instant submittal should be suspended from the requested effective date (59 days after Niagara's revised submittal) rather than from 60 days after the amended filing. In this regard, we note that Niagara's original submittal complied with the notice requirements and was not patently deficient. Had Niagara not voluntarily filed reduced rates correcting its omission of an interest deduction for income tax purposes, we would not have rejected the filing but would, instead, have ordered summary disposition consistent with Commission precedent on this issue. Niagara would have been required to file revised rates reflecting the proper interest deduction, but the revised rates would have been suspended from November 1, 1983, the originally requested effective date.

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's designation that EPA consider chemical fate and environmental effects testing of seven alkyltin substances under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not initiating rulemaking under section 4(a) to require such testing at this time. At present, EPA does not believe that there is a sufficient basis to find that these substances may present an unreasonable risk to the environment, or that there is or may be substantial environmental release of these substances.

FOR FURTHER INFORMATION CONTACT:

Jack P. McCarthy, Director, TSCA Assistance Officer (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:**I. Background**

Section 4(a) of the Toxic Substances Control Act (TSCA) or The Act (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations which require manufacturers and processors to test chemical substances and mixtures. Data developed through these test programs are used by EPA in assessing the risks that the tested chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act. The ITC may designate up to 50 of its recommendations at any one time for priority consideration by EPA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under section 4(a) or by publication in the *Federal Register* reasons for not doing so.

On November 3, 1982, the ITC designated the seven alkyltin substances listed below for priority consideration in its Eleventh Report, published in the *Federal Register* of December 3, 1982, (47 FR 54824). The Committee recommended that these substances (see Table 1) be considered for testing for: (1) Chemical fate, including mobility of the substances from manufacturing and disposal sites, hydrolysis, biodegradation, and identification of persistent degradation products; and (2) acute and chronic toxicity to fish and aquatic

invertebrates, toxicity to aquatic plants, and bioconcentration.

TABLE 1. ALKYLtin SUBSTANCES

Chemical substances	CAS No.
Alkyltin Compounds:	
Dibutyltin dilaurate	77-58-7
Dimethyltin S,S'-bis (isooctyl mercaptoacetate)	26635-01-1
Dibutyltin S,S'-bis (isooctyl mercaptoacetate)	25168-24-5
Dibutyltin bis (isooctyl maleate)	25168-21-2
Dibutyltin bis (lauryl mercaptoacetate)	1185-61-5
Monobutyltin tris (isooctyl mercaptoacetate)	25852-70-4
Monomethyltin tris (isooctyl mercaptoacetate)	54849-38-6

The ITC's recommendations of the designated substances were based on: (1) Substantial production; (2) their use as stabilizers in polyvinyl chloride (PVC) and chlorinated polyvinyl chloride (CPVC) products, especially piping for potable water; (3) the potential for exposure to the environment through leaching in their use as stabilizers in plastic materials and as catalysts, and through manufacturing wastes; and (4) the potential of these compounds for persistence and bioaccumulation in the environment, resulting in potential risk to environmental organisms. The ITC based its concerns for the potential environmental hazard posed by these seven alkyltin substances on their presumed structural similarity to certain trialkyltin substances which are registered under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) for use as pesticides and antifoulants. Presently there are no known TSCA uses for the trialkyltin substances even though some of them are listed on the TSCA inventory (Ref. 27).

In evaluating the ITC's testing recommendations for the seven designated alkyltin substances, EPA considered all relevant information, including the following: (1) Information presented in the ITC's Eleventh Report; (2) production volume, use, and exposure information reported by manufacturers of the alkyltins; and (3) other published and unpublished data available to the Agency, including any data submitted under TSCA section 8(d). The Agency also expects to use reported information from a recently proposed TSCA section 8(a) rule to verify the conclusions that it has made in this notice. EPA also considered the availability of validated analytical methods to identify and quantitate the alkyltins. Based on its evaluation, as discussed below, EPA is not initiating rulemaking at this time under section 4(a) to require environmental effects testing of the seven alkyltins.

II. Assessment of Exposure and Environmental Effects**A. Production, Release, Exposure**

The seven ITC-designated alkyltin substances are methyl or butyltin compounds in which one or two alkyl groups are relatively strongly bound to tetraivalent tin; the remaining tin bonds are more weakly bound to mercaptide, mercaptoacetate or ester anions. Few physical data are available on these substances. It is generally believed, however, that most of them are high boiling-point (low vapor pressure) liquids that have low solubility in water but may dissociate in water to form aquated compounds of moderate water solubility (Ref. 7). Only the methyltins have appreciable volatility (Ref. 21).

The ITC reported 1982 production ranges for each of the designated alkyltins between 0.5 and 4.6 million pounds per year (Ref. 35). Most of these compounds are produced and used as stabilizers for PVC, CPVC, or other plastics where they are present in concentrations ranging from 0.3 percent to 2.5 percent (Ref. 21). The plastics stabilized with these compounds are used mainly in construction applications such as pipe (including potable water pipe), conduits, floor and wall coverings, and outside siding (Ref. 21). Dibutyltin dilaurate is an exception because only 14 percent is used as a stabilizer, the bulk of it being used as a catalyst for polyurethane foams, as a chemical intermediate, or as an anthelmintic (anti-tapeworm agent) and coccidiostat for poultry (Refs. 7, 21). The latter two uses are not subject to TSCA jurisdiction. The use of dibutyltin dilaurate has declined sharply in recent years apparently due to the use of competitive agents which would account for a real decline in production and in the fraction used for catalysts (Ref. 21). Production of the six other category members is projected to increase at an average growth rate of six percent annually through 1986 (Ref. 34).

In assessing the potential environmental release and exposure to the designated alkyltins, EPA considered three main paths of potential release: leaching from plastics, release incidental to catalyst use, and release from both alkyltin manufacturing plants and PVC/CPVC fabrication plants. The Agency also considered other sources of these types of compounds in the environment, i.e., the potential release of butyltins from the chemical and biological degradation of tributyltin pesticides and the formation of methyltins from the biomethylation of inorganic tin present in the environment.

EPA's analysis of this information is presented below.

1. Leaching from plastics.

Approximately 12 million pounds per year of the designated alkyltins are used as stabilizers in PVC and CPVC products. Most of these uses result in the alkyltins being dispersed into the environment encapsulated in a plastic matrix (Ref. 7). Although the ITC expressed concern about the leaching of the alkyltins from plastic products, especially from pipe used for potable water, EPA has found that any anticipated release would occur very slowly. The available evidence also indicates that what is released from the PVC/CPVC matrix are reaction products formed during the polymer stabilization process rather than intact alkyltins. Recent studies indicate that organotin compounds react with the polymer during stabilization to prevent the release of hydrogen chloride and subsequent degradation of the long polymer chains (Ref. 3). Only the reaction products, in the form of alkyltin chlorides, are available for leaching (Ref. 3).

In studies designed to determine whether or not organic forms of tin existed in potable water samples after contact with organotin stabilized PVC/CPVC under various environmental conditions, Boettner et al. (1982) reported that the maximum leaching rates for organotin compounds, detected as either dimethyltin dichloride or dibutyltin dichloride, are on the order of 10^{-6} mg/m²/second. The sustained rate appears to be about 10^{-7} mg/m²/second. These studies found no evidence of the anionic part of the stabilizer in the extractant water. These results indicate that the migration of intact organotin compounds from the plastic matrix is minimal, if it occurs at all, and calculated values for lifetime leaching are on the order of thousands of years (Ref. 7).

Using data generated in the Boettner study, EPA derived worst-case estimates expected for maximum environmental concentrations of alkyltins. The estimated concentrations apply to surface waters and are based on the release of alkyltins from PVC pipe and tubing used in domestic water supply systems (Ref. 36). EPA estimated, in a typical example, that the concentrations of alkyltin would be 6.67×10^{-6} ppb for the average stream flow and 6.11×10^{-6} ppb for the minimum stream flow for the Potomac River. These levels, in the parts per quadrillion range, are expected to have little, if any, impact on the environment.

2. Release incidental to catalyst use.

Three of the designated alkyltins are

also used as polymer catalysts. The alkyltin manufacturers indicated that the total catalyst use of the designated alkyltins was about 0.174 million pounds per year, or 1.2 percent of total consumption for these substances (Ref. 24). In this use, the catalyst is added to the polymer in low concentrations (1 percent) and subsequently incorporated in the cured polymer matrix (Ref. 36). Thus, the leaching rate for the catalysts should be similar to that of the stabilizers; but, because of the lower production volumes, EPA believes they will have even less impact on the overall environmental burden of alkyltins than that generated from stabilizer use.

3. Release from manufacturing/fabrication plants.

Other possible sources of the designated alkyltins are PVC/CPVC fabrication plants and alkyltin manufacturing plants. In the former case, release during fabrication should be low because almost all the alkyltin entering the fabrication plant leaves incorporated in the plastic (Ref. 7). There may, however, be small amounts of spillage or residue in discarded drums or containers. There may also be some loss from maintenance and cleaning of machinery. For manufacturing plants, release may be as high as 0.01 percent of production or approximately 1,500 pounds per year of total organotin produced (Ref. 36). M & T Chemicals, one of the major organotin producers in the U.S., estimated that 10-20 pounds of total tin each day reaches factory effluents after treatment and sludge recovery from its manufacturing operations (Refs. 7, 24). Eighty percent of this is estimated to be "organotin", 60-70 percent of which is diorganotin, the rest being monoorganotin. No estimation of the amount of trialkyltin or other organotin compounds leaving the plant was given (Ref. 17). Dealkylation of the tin compounds in the treatment system is expected. The waste treatment sludges containing tin residues are recovered and reprocessed to recover tin which has a value estimated at 6-7 dollars/pound (Ref. 17). No attempt has been made, nor is the technology available, to identify which specific compounds are being released by this process. It is EPA's opinion that, in any case, the potential release of the designated alkyltins from manufacturing and PVC/CPVC fabrication is expected to be low and should be considerably less than the alkyltins released to the environment from pesticide use (antifouling paints, fungicides, etc.).

4. Degradation of trialkyltin pesticides.

Chemical fate studies that have been done on alkyltin substances

have been performed primarily on the trialkyltins. These studies present evidence that the alkyltins degrade at moderate to slow rates under environmental conditions. They also indicate that the degradation of the tributyltin pesticides and antifoulants may be the most important source of di- and monobutyltin in the environment. There are four environmental processes that have been identified that demonstrate degradation of the trialkyltin compounds either by loss of the anion or loss of an alkyl group (i.e. transforming a trialkyltin to a dialkyltin, a dialkyltin to a monoalkyltin, and a monoalkyltin to elemental tin). These are: (1) Hydrolytic destannylation, which appears to proceed fairly slowly with half-lives on the order of months (Ref. 32); (2) photolysis, which proceeds at moderate rates with half-lives of days to weeks (Ref. 32); (3) biodegradation, which also proceeds fairly slowly, with half-lives also on the order of months (Refs. 29, 31 and 32); and (4) hydrolysis, whereby, the anions rapidly dissociate from the alkyltin cations when the substances are dissolved in water or some other solvent with half-lives on the order of days (Refs. 22 and 25). Therefore, the half-lives for degradation of the trialkyltins to di- and monoalkyltins is on the order of days to months and can be contrasted with the hundreds of years it takes for the leaching of dibutyltin from plastics (Ref. 7).

5. Natural formation of methyltins in the environment.

The biomethylation of tin in the environment has been an area of recent study. Biomethylation of tin has been shown to occur in a bacterium (*Pseudomonas* sp.) isolated from the Chesapeake Bay (Ref. 2). Other studies also point to biomethylation of tin derived from anthropogenic sources as a possible primary source of increased levels of methyltin compounds in the environment (Refs. 4, 6, and 14). The chemistry behind the biomethylation of tin is complex (Refs. 9, 11, 26, and 41). Ridely et al. (1977) proposed a biological cycle for tin whereby Sn (II), by single-electron oxidation, or Sn (IV), by single-electron reduction, forms a reactive Sn (III) radical that can then form monomethyltins and, in successive, reversible reactions, dimethyltins, trimethyltins and tetramethyltin. Monitoring data by Braman and Tompkins (1979) also support biomethylation of tins in the environment as a source of environmental methyltin compounds. However, although biomethylation of tin appears to take place in the environment, the rate of this process is

currently unknown. Brinckman (1981) points out that "detailed or quantitative relationships cannot be inferred from the presently sketchy data, but it is clear that the extent of biomethylation of so-called non-essential or toxic metals and metalloids is probably partly limited to current capabilities for their detection."

B. Monitoring and Analytical Methods

Tin and alkyltin substances have been monitored for and detected in the environment. Monitoring studies of the aquatic environment have reported the presence of tin measured as inorganic tin, methyltin, butyltin and total tin (i.e., all tin substances, organic and inorganic, combined); other specific alkyltins (e.g., ethyltin) have not been reported. Generally, total tin levels reported in these studies are in the very low to middle parts per trillion range (Refs. 4, 6, 13, 14, 20, and 28). Some areas had higher concentrations; in an extreme instance, samples taken near a marina at Lake St. Clair, Toronto, Canada, revealed a total tin concentration of 24.7 ppb and a total butyltin concentration (mono-, di- and tributyltins) of 18.7 ppb (Ref. 20). Seidel *et al.* (1980) noted that, overall, tin concentrations in recent terrestrial and marine deposits are higher than preindustrial age deposits by a factor of approximately ten. They hypothesize that this increase must be due to anthropogenic sources of tin release. In support of this hypothesis, Byrd and Andreae (1982) state that the annual production of all tin (i.e., both organic and inorganic uses) is about 528 million pounds and this production rate exceeds the rate of natural input of tin from erosion by a factor of more than ten. (It should be noted in this context of overall environmental tin fluxes that the vast bulk of tin production goes into inorganic tin uses [such as tin-plating steel] with only 8.7 percent of world tin production presently being used to manufacture organotin chemicals (Ref. 39).)

Currently, there is no way to positively identify the origin of the organotins found in the environment. Analytical methods for identifying trace levels of alkyltins have been developed, but they are not standardized. The problem of identifying the anions, which might then allow identification of the parent tin compounds, is even more difficult and has not been accomplished for environmental samples. Hence, there are no means currently available to distinguish, in the environment, the alkyltins used in pesticides from those resulting from manufacturing sources or from those occurring naturally (e.g., by biomethylation). However, suspected

sources have been identified. Butyltin pollution has been associated with the use of tributyltins as an anti-fouling agent in ship paints (Refs. 20 and 28). Furthermore, as noted above, a suspected primary source of increased levels of methyltin is organic and inorganic tin compounds which are subsequently biomethylated to methyltin forms by bacteria (Refs. 4, 6, and 14). These sources of environmental exposure are not directly related to, and can be contrasted with, the low releases expected from the seven ITC-recommended alkyltins.

C. Environmental Effects

The ITC recommended that the designated mono- and dialkyltin compounds be considered for acute and chronic aquatic toxicity testing to plants and animals and bioconcentration testing. These recommendations were based on the structural similarity of these compounds to the highly toxic trialkyltins, which are registered and used exclusively as pesticides, and on their high calculated Log P values.

Much of the toxicity data for the environmental effects of the organotins is on the trialkyltin compounds. Of the alkyl-substituted tins, maximum toxicity to all forms of life occurs with the trialkylated forms (Ref. 42). For instance, acute toxicity studies in mammals (mice and rats) suggested that the toxicity of the alkyltins increases substantially with an increased degree of alkyl substitution on the tin atom (Refs. 16 and 33). Thus, the tri-substituted tins are considerably more toxic than the dialkyltins and the dialkyltins are more toxic than the monoalkyltins. The anions associated with the organotin moiety seem to have little effect on the observed toxicity. Acute toxicity data on algae, fungi, insects and fish with mono-, di-, and trialkyltins confirm this pattern of increasing toxicity with increasing numbers of alkyl substituents on the tin atom (Refs. 1, 8, 12, 15, 18, 19, 30, and 40). These studies indicate that whereas the trialkyltins are generally toxic at 1 to 1,000 ppb exposure concentrations, the mono- and dialkyltins are not toxic until exposure concentrations reach 0.1 to 1,000 ppm. Thus, the mono- and dialkyltins are two to three orders of magnitude less toxic than the trialkyltins, a factor apparently not taken into account by the ITC when they made their recommendation.

There are statistically significant correlations between the logarithm of the octanol-water partition coefficient (Log P) and fish bioconcentration factors (BCFs) for chemicals with Log P values between one and five (Refs. 23 and 38). However, recent laboratory studies

indicate that this correlation does not necessarily hold for chemicals with Log P values greater than five (Refs. 10 and 38). Calculated Log P values for the seven designated alkyltins are between 8.6 and 16.8 (Ref. 37). In experiments on two dialkyltins and one monoalkyltin, Maeda and Nishikawa (1980a and 1980b) and Kidooka (1982) reported measured BCFs of 0.3 to 16 in carp after eight weeks of exposure. One of these compounds, *n*-butyltin (2-hydroxyalkyl (C=14)-1-thio) sulfide, has a structure similar to that the alkyltins designated by the ITC and has a calculated Log P value of 8.5 (Ref. 37). The predicted BCF for this particular compound is 3.2 million, using the algorithm of Veith *et al.* (1979), Log BCF = 0.85 Log P - 0.70. However, the measured BCF for this chemical substance was only 3-16 (Ref. 15). The estimates of Log P, which are for the intact molecule, also do not hold if the anions are unstable, which is expected (see Unit II. A.). If the mercaptoacetate, mercaptide, etc., groups are lost by hydrolysis, for example, then the Log P values for these compounds would fall below two and there would again be little predicted potential for bioaccumulation. Therefore, the Agency believes that standard estimation techniques of bioconcentration from Log P estimates are not appropriate for this class of substances.

III. Decision not to Initiate Rulemaking

EPA has concluded that there is not a sufficient basis to find that there is substantial environmental release of the seven designated mono- or dialkyltins recommended by the ITC. Neither has EPA found evidence that the current manufacture, distribution in commerce, processing, use, or disposal of these substances may present an unreasonable risk of injury to the environment.

From the analysis presented in Unit II.A., EPA has determined that the environmental exposure to the designated alkyltins is extremely low (low parts per quadrillion). Although higher levels of alkyltins have been detected in the environment (levels in the parts per trillion range), the Agency believes that the primary source of this material is from degradation of the tributyltin pesticides to their mono- and/or dibutyltin degradation products. This conclusion is based on the observed levels of the compounds occurring in areas frequented by marine vessels known to use antifouling paints containing tributyltin pesticide compounds and the lack of evidence of significant release of the ITC-designated

substances from industrial manufacturing and use. EPA's belief that the presence of methyltin detected in the environment is from naturally occurring biomethylation processes is supported by the studies discussed in Unit IIA., in which methyltins were detected in areas not subjected to industrial contamination. In addition, EPA has no reason to believe that the release of the ITC-designated substances from plastics or industry contributes significantly to environmental levels of alkyltins.

The Agency believes that chemical fate data exist to reasonably predict that the designated alkyltins will degrade at moderate to slow rates, i.e., days to months. As indicated in Unit IIA., these rates of degradation are relatively fast compared to the thousands of years required for the anticipated leaching of the mono- and dialkyltins from plastic products. EPA does not believe that these alkyltins would play a significant role in the potential accumulation of alkylated in environmental species.

While the bioconcentration potential of the designated alkyltins is estimated to be high, as discussed in Unit ILC., only a small proportion of these intact tin molecules are expected to reach the environment. In contrast, the alkyltin species leached as alkyltin chlorides, have calculated bioaccumulation value of less than 100. In addition, should the intact alkyltins reach the environment, expected rapid hydrolysis would result in compounds with a much lower potential for bioconcentration. The Agency also has evidence that standard estimation techniques of bioconcentration from Log P calculations are not appropriate for these substances. Therefore, based on the available data, EPA has concluded that chemical fate and bioconcentration testing cannot be supported under section 4 of TSCA at this time.

EPA has also concluded that the existing data do not support a finding that the designated alkyltin compounds "may present an unreasonable risk" to the environment. As discussed in Unit II C., toxicity studies done on a variety of tri-, di-, and monoalkyltins on a wide variety of organisms demonstrate that mono- and dialkyltins are two to three orders of magnitude less toxic than the trialkyltins. As noted above, the tributyltin pesticides are produced and distributed in the environment deliberately for biogenic uses and have been and are being evaluated by the Agency's Office of Pesticide Programs for those uses. EPA has no reason to believe that the seven designated mono- and dialkyltins are present in significant

levels in the environment or that there exists a potential risk to the environment from their presence. Accordingly, EPA finds no current basis to require testing.

The Agency recognizes, however, that should the use or production of these seven mono- and dialkyltins change, then there could arise a potential for unreasonable risk of injury to the environment. Therefore, the Agency will be examining these substances for the potential issuance of a significant new use rule or other follow-up action.

III. References

- (1) Blum MS, Pratt JJ. 1960. Relationships between structure and insecticidal activity of some organotin compounds. *J. Econ. Entomol.* 53(3): 445-448.
- (2) Blair WR, Olson GJ, Brinckman FE, Iverson WP. 1982. Accumulation and fate of tri-n-butyltin cation in estuarine bacteria. *Microb. Ecol.* 8(3): 241-51.
- (3) Boettner EA, Ball GL, Hollingsworth Z, Aquino R. 1982 (Feb.). Organic and organotin compounds leached from PVC and CPVC pipe. Project summary. Cincinnati, OH: Health Effects Research Laboratory, U.S. EPA. Contract No. 600/1-81-062.
- (4) Braman RS, Tompkins MA. Separation and determination of nanogram amounts of inorganic tin and methyltin compounds in the environment. 1979. *Anal. Chem.* 51(1): 12-19.
- (5) Brinckman FE. 1981. Environmental organotin chemistry today: experiences in the field and laboratory. *Organomet. Chem. Libr.* 12: 343-376.
- (6) Byrd JT, Andreas MO. 1982. Tin and methyltin species in seawater concentration and fluxes. *Science* 218: 565-569.
- (7) Capital Systems Group, Inc. and Dynamac Corp. 1983 (March 24). Final Technical Support Document: Alkyltins. Draft Report. Washington, D.C. Office of Pesticides and Toxic Substances. U.S. Environmental Protection Agency.
- (8) Chau YK, Wang PT. Some environmental aspects of organo-arsenic, lead, and tin. 1981. *NBS. Spec. Publ. (U.S.) No. 618*, pp. 65-80.
- (9) Dizikes LJ, Ridley WP, Wood JM. 1977. A mechanism for the biomethylation of tin by reductive Co-C bond cleavage of alkylcobalamins. *J. Amer. Chem. Soc.* 100 (3): 1010-1012.
- (10) Esser HO, Moser P. 1982. An appraisal of problems related to the measurement and evaluation of bioaccumulation. *Ecotoxicol. Environ. Saf.* 6, 131-148.
- (11) Fanchiang YT, Wood J. 1981. Alkylation of tin by alkylcobalamins. Kinetics and mechanisms. *J. AM. Chem. Soc.* 103: 5100-5103.
- (12) Hallas LE, Cooney JJ. 1981. Effects of stannic chloride and organotin compounds on estuarine microorganisms. *Dev. Ind. Microbiol.* 22, 529-35.
- (13) Hodge VF, Seidel SL, Goldberg ED. 1979. Determination of tin (IV) and organotin compounds in natural waters, coastal sediments and macro algae by atomic absorption spectrometry. *Anal. Chem.* 51 (8): 1256-1259.
- (14) Jackson JA, Blair WR, Brinckman FE, Iverson WP. 1982. Gas-chromatographic speciation of methylstannanes in the Chesapeake Bay using purge and trap sampling with a tin-selective detector. *Environ. Sci. Technol.* 16(2): 110-119.
- (15) Kidooka S. 1982. Methods for testing the degree of accumulation of an organotin compound in fish bodies. Sankyo Organic Chemicals Co. Ltd. Kanagawa, Japan. Presented at the ORTEP Fourth World Meeting, Sept. 23-24, 1982. Wildhouse, Switzerland.
- (16) Luijten JG, Klimmer OR. (undated). A toxicological assessment of organotin compounds. International Tin Research Institute No. 501D.
- (17) M & T Chemicals, Inc. 1982. Unpublished data of alkyltins provided by Mr. Arthur E. Slesinger, July 19, 1982.
- (18) Maeda F, Nishikawa A. 1980a. Bioaccumulation of dimethyltin phosphate into carp. Unpublished data. Mitsubishi-Kasei Institute of Toxicology and Environmental Sciences, Tokyo, Japan. Mites Report No. 54-336.
- (19) Maeda F, Nishikawa A. 1980b. Bioaccumulation of dimethyltin thioglycolate into carp. Unpublished data. Mitsubishi-Kasei Institute of Toxicology and Environmental Sciences, Tokyo, Japan. Mites Report No. 54-337.
- (20) Maquire RJ, Chau YK, Bengert GA, Hale EJ. 1982. Occurrence of organotin compounds in Ontario lakes and rivers. *Environ. Sci. Technol.* 16(10):699-702.
- (21) Mathtech, Inc. 1983 (Jan.) Level I Economic Evaluation: Alkyltin Category. Draft Report. Arlington, VA. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. EPA-68-01-6630.
- (22) Mazaev VT, Goldvanov OV, Igumnov AS, Tsai VN. 1976. The problem of the transformations of organotin compounds in water mixtures. *Gig Sanit* 3:17-20. (In Russian, English translation).
- (23) Neely WB, Branson DR, Blau GE. 1974. Partition coefficient to measure bioconcentration potential of organic chemicals in fish. *Environ. Sci. and Tech.* Vol. 8 (13) p. 1115-1115.
- (24) ORTEP. 1982. Organotin Environmental Program. Unpublished data on alkyltins provided by Mr. Arthur W. Sheldon, August 23, 1982.
- (25) Parker RG, Carman CJ. 1977. The ligand exchange reaction of some dialkyltin dimercaptides and dicarboxylates with dialkyltin dichlorides. Observation by ^1H and ^{13}C NMR. Implications for polyvinyl chloride stabilization. *Polym. Preprints* 18(1): 510-513.
- (26) Ridley, WP, Dizikes LJ, Wood JM. 1977. Biomethylation of toxic elements in the environment. *Science* 197:329-332.
- (27) Ravenscraft P. 1981. SRI International. Uses for bis (tributyl tin) oxide and tributyltin fluoride other than biocidal. Washington, DC: Office of Pesticide Agency. Technical Directive 1.4.1 of Contract 68-01-6016.
- (28) Seidel SL, Hodge VF, Goldberg ED. 1980. Tin as an environmental pollutant. *Thal. Jugoslavica* 16(2-4): 209-223.

(29) Sheldon AW, Slesinger AE. 1978 (March 21). Dissipation and detoxification of organotins in the environment. Rahway NJ, M & T Chemicals, Inc.

(30) Sijesteijn AK, Luitjen JG, Van der Kerk CJ. 1989. Organometallic fungicides. In: Fungicides: An Advanced Treatise. Vol. II. Chemistry and Physiology. Torgeson DC, ed. NY: Academic Press, pp. 345-353.

(31) Slesinger AE. 1977 (March 17). The safe disposal of organotins in soil. Rahway, NJ: M & T Chemicals, Inc.

(32) Slesinger AE, Dressler I. 1978 (Feb.). The environmental chemistry of three organotin chemicals. Draft. Rahway, NJ: M & T Chemicals, Inc.

(33) Smith PJ. Structure/activity relationships for di- and tri-organotin compounds. (Undated). International Tin Research Institute, U.K.

(34) SRI. 1982. Stanford Research International. Chemical industries division newsletter. Menlo Park, CA.

(35) USEPA. 1982. Eleventh Report of the Interagency Testing Committee to the Administrator: Receipt of the report and requests for comments regarding priority list chemicals. *Federal Register* December 3, 1982 (47 FR 54624).

(36) USEPA. 1983a. U.S. Environmental Protection Agency. April 5, 1983. Memorandum from Michael A. Callahan to Steven D. Newburg-Rinn.

(37) USEPA. 1983b. U.S. Environmental Protection Agency. July 15, 1983. Memorandum from Gary Thom to John Schaeffer.

(38) Veith GD, De Foe DL, Bergstedt BV. 1979. Measuring and estimating the bioconcentration factor of chemicals in fish. *J. Fish. Res. Board Can.* 36: 1040-1048.

(39) WHO. World Health Organization. 1980. Environmental Health Criteria 15. Tin and Organotin Compounds. 15:1-109.

(40) Wong PT, Chau YK, Kramer O, Bengert GA. 1982. Structure-toxicity relationship of tin compounds on algae. *Can. J. Fish. Aquat. Sci.* 39: 483-488.

(41) Wood JM, Cheh A, Dizikes LJ, et al. 1978. Mechanisms for the biomethylation of metal and metalloids. *Fed. Proc.* 37(1): 16-21.

(42) Zuckerman JJ. 1972. Organotins in biology and the environment. In: *Marine Pollution and Sea Life*, p. 343 RTS 21.98 001.

IV. Public Record

The EPA has established a public record for this testing decision (docket number OPTS-42037) which includes:

(1) Federal Register notice designating the alkyltin compounds to the Priority List and all public comments received thereon.

(2) Communications consisting of letters, contact reports of telephone conversations, and meeting summaries.

(3) Published and unpublished data.

The record, containing the basic information considered by the Agency in developing the decision, is available for inspection in the OPTS Reading Room from a.m. 8:00 to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington,

D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: October 27, 1983

William D. Ruckelshaus,
Administrator.

[FR Doc. 83-30139 Filed 11-7-83; 8:45 am]

BILLING CODE 5560-50-M

[A-7-FRL 2466-7]

Region VII; Actions Taken Under the PSD and NSPS Regulations (Iowa/Kansas)

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under either the Federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR 52.21 (as amended on August 7, 1980), or the Federal Standards of Performance for New Stationary Sources (NSPS), 40 CFR Part 60, regulation:

(A) PSD permits were issued to the following entities allowing for the construction of the following units:

Iowa Electric Light and Power Company, Guthrie County (Iowa) Generating Station: A coal-fired boiler (650-megawatt boiler/turbine unit) and related coal and ash handling equipment. *Issued:* October 29, 1982.

Monsanto Company, Muscatine, Iowa: A coal-fired boiler (150 million BTUs per hour, maximum heat input) and related coal and ash handling equipment. *Issued:* November 12, 1982.

City of Kingman, Kansas: A 2500-kilowatt dual fuel internal combustion engine/generator (Unit #8). *Issued:* March 1, 1983.

(B) The following revisions were made to previously-issued PSD permits:

Northern Natural Gas Company, Cunningham Compressor Station, Cunningham, Kansas: The carbon monoxide emission limit for three interval combustion (IC) engines was revised from 9 to 15 lbs/hour in consideration of the results of a performance test. *Issued:* November 29, 1982.

Colorado Interstate Gas Company, Lakin Compressor Station, Kearny County, Kansas: Various revisions were made to clarify, strengthen, and/or reword several of the conditions of the permit. The permit was also extended as discussed below. The proposed project is briefly discussed in section (C) of this notice. *Issued:* August 18, 1983.

Monsanto Company, Muscatine, Iowa: The span value specified for the sulfur dioxide continuous emission monitor in the November 12, 1982, permit was

revised to improve the accuracy of the system. The proposed project is briefly discussed in section (A) of this notice. *Issued:* August 28, 1983.

Muscatine Power and Water, Muscatine, Iowa: The PSD permit issued on January 24, 1980, for a utility sized coal-fired boiler was revised to incorporate a revised agreement between the company and the State of Iowa pertaining to lowest achievable emission rate (LAER) and emissions offset requirements for sulfur dioxide. *Issued:* September 6, 1983.

(C) The following extensions of the "commencement of construction" deadline of previously-issued PSD permits were issued:

American Modern Food Energy Systems, Ames, Iowa: Proposed ethanol plant, approved by the regional office on April 15, 1981. Original Deadline: October 15, 1982. Revised Deadline: October 15, 1983. *Issued:* November 18, 1982.

A. E. Staley Manufacturing Company, Des Moines, Iowa: Proposed coal-fired boiler and related equipment, approved by the regional office on July 30, 1981. Original Deadline: January 30, 1983. Revised Deadline: July 30, 1984. *Issued:* May 10, 1983.

Colorado Interstate Gas Company, Lakin Compressor Station, Kearny County, Kansas: Proposal to install four additional natural gas-fired compressor engines approved by the regional office on October 19, 1981. Original Deadline: April 19, 1983. Revised Deadline: October 19, 1984. *Issued:* August 18, 1983.

(D) The following PSD and/or NSPS non-applicability determinations were issued by the regional office (NOTE: Where indicated, the company obtained state-imposed federally enforceable restrictions to avoid PSD review):

A. Y. McDonald Manufacturing Company, Dubuque, Iowa: The proposed brass foundry plant will have an emission increase of less than 250 tons per year and, as such, does not qualify as a new "major stationary source" as defined in the PSD regulation. A federally enforceable limitation on hours of operation per year was obtained by the company. *Issued:* September 23, 1982.

Getty Refining and Marketing Company, El Dorado, Kansas: The company's proposal to install an additional "train" onto its existing 55 long ton per day sulfur recovery unit will not result in a significant net emissions increase and, as such, does not qualify as a "major modification" as defined in the PSD regulation. A federally enforceable limitation on total

production rate was obtained by the company. *Issued:* October 22, 1982.

Flex-O-Lite, Muscatine, Iowa: The company's proposal to construct a glass bead manufacturing plant will have an emissions increase of less than 250 tons per year. As such, the proposed project does not qualify as a "major stationary source" as defined in the PSD regulation. *Issued:* September 23, 1983.

Archer Daniels Midland Company, Clinton, Iowa: The company's proposal to again burn coal in three existing boilers qualifies for the exemption of 40 CFR 52.21(b)(2)(iii)(e)(1) regarding "capable of accommodating" the proposed fuel type and, as such, does not constitute a "major modification" as defined in the PSD regulation. *Issued:* October 4, 1983.

Shell Oil Company, Bettendorf, Iowa: The change of product stored in an existing storage tank (from kerosene to gasoline) does not qualify as a modification as defined in the Federal NSPS regulation, 40 CFR Part 60. *Issued:* November 18, 1982.

Under section 307(b)(1) of the Clean Air Act, judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within sixty (60) days of today's notice. Under 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements.

In the above cases, the appropriate courts are the Eighth U.S. Circuit Court of Appeals (St. Louis, Missouri) for sources in Iowa and the Tenth U.S. Circuit Court of Appeals (Denver, Colorado) for sources in Kansas. A petition for review must be filed with the appropriate court on or before January 9, 1983.

Copies of the above actions and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Waste Management Division, Air Branch (Room 1414), 324 East 11th Street, Kansas City, Missouri 64106.

Dated October 26, 1983.

Morris Kay,
Regional Administrator.

[FR Doc. 83-30157 Filed 11-7-83; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL 2467-1]

Extension of the Expiration Date of PSD Permits; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD-TX-63; Texas Industries; issued for the construction of a Portland cement plant located on FM Road 1102, approximately 2.5 miles southwest of Hunter, Comal County, Texas; extension requested because the company had to cease construction due to economic conditions; extension was granted to a new expiration date of December 22, 1983.

2. PSD-LA-79; Resource Refining Company; issued for the construction of a 30,000 barrel per day crude oil topping unit located on the Calcasieu River near Vincent Landing, Calcasine Parish, Louisiana; construction was delayed due to changing economic conditions in the refining industry; extension was granted to a new expiration date of October 30, 1981.

3. PSD-TX-87 and PSD-TX-88; Tennessee Gas Pipeline Company; issued for the construction of natural gas turbine compressor stations located approximately 1 mile southwest of Banquete, Nueces County, Texas (PSD-TX-87) and near Edinburg, Hidalgo County, Texas (PSD-TX-88); additional extensions were requested since construction has not commenced due to intervention of U.S. DOE, and the reaction to such intervention by the government of Mexico, which delayed the negotiations for the purpose of gas from Mexico that underlines the need for the permitted sources; extensions were granted for an additional eighteen months to new expiration dates of January 19, 1984. (PSD-TX-87) and January 26, 1984. (PSD-TX-88).

4. PSD-TX-95; Knauf Fiber Glass Company; issued for the construction of a fiber glass manufacturing plant to be located approximately 7 miles east of Marshall, Harrison County, Texas; extension was requested because the economic conditions made it economically unfeasible to commence construction before the expiration date of the permit; extension was granted for twelve months to a new expiration date of May 23, 1982; company requested an additional 18 months extension because of continuing depressed economic conditions; extension was granted to a new expiration date of November 23, 1983.

5. PSD-TX-174; Long Star Industries, Inc.; issued for the construction of a

Portland cement manufacturing facility to be located off Highway 81, approximately 3.5 miles southwest of Georgetown, Williamson County, Texas; construction was delayed due to the economic condition; extension granted to a new expiration date of August 19, 1983; company requested an additional extension due to continued instability of economic conditions; extension granted to a new expiration date of July 31, 1984.

6. PSD-OK-218; Oklahoma Gas and Electric Company; issued for the construction of two additional 550 MW coal-fired steam electric generators at the Sooner Station located on Highway 15, approximately 19 miles north of Stillwater, Oklahoma in the counties of Noble and Pawnee; extension was requested due to the reduced growth in demand for energy and difficulties in obtaining adequate and timely rate relief; extension was granted to a new expiration date of January 28, 1985.

7. PSD-TX-229; Uni Oil Company; issued for the modification of the existing facility located on FM Road 2725, approximately 2 miles southeast of Ingleside, San Patricia County, Texas to enable the refinery to make premium unleaded gasoline; extension was requested because Uni Oil was sold to Texas Independent Oil Corporation and the new owners needed time to plan a program to resume construction of the expansion; extension was granted to a new expiration date of September 12, 1982.

8. PSD-TX-236; Petraco Valley Oil and Refining Company; issued for the construction of a new 100,000 barrels per day petroleum refinery to be located on State Highway 48, approximately 7 miles northeast of Brownsville, Cameron County, Texas; extension was requested due to the delay in obtaining approval from the Texas Department of Water Resources and EPA to discharge Petraco's wastes into the Brownsville Navigation District's publicly owned treatment works; extension was granted to a new expiration date of September 1, 1982.

9. PSD-TX-243; Coastal States Petroleum Company; issued for the expansion of the existing refinery located off Highway 37 in Corpus Christi, Nueces County, Texas; construction has not commenced due to market conditions and structural reorganization activities within the company; one year extension granted to a new expiration date of May 12, 1983; due to the continuation of the conditions stated in the previous extension request, an additional one year extension has been granted to a new expiration date of May 12, 1984.

10. PSD-TX-262; Nederland Processing Company; issued for the construction of a petroleum refinery to be located near the intersection of Highways 366 and 347 in Nederland, Jefferson County, Texas; construction has been delayed due to depressed economic conditions; extension was granted to a new expiration date of April 30, 1983; due to continued depressed economic conditions, an additional extension was granted to a new expiration date of April 10, 1984.

11. PSD-TX-299; Gulf Oil Chemicals Company; issued for the construction of a low density/high density polyethylene plant to be located on Highway 185, approximately 13 miles south of Victoria, Victoria County, Texas; construction has been delayed due to the economic conditions; extension granted to a new expiration date of March 23, 1984.

12. PSD-LA-305; Gulf States Utilities Company; issued for the modification of the existing Roy Nelson Generating Station located on Highway 90, approximately 8 miles northwest of Lake Charles, in Westlake, Calcasieu Parish, Louisiana; construction has been delayed due to changes in government policies and the national economic condition; extension was granted to a new expiration date of August 29, 1984.

13. PSD-TX-328; Amerada Hess Corporation; issued for the construction of a tertiary oil recovery facility to be located in the Seminole-San Andres oil field on State Highway 214, approximately 4 miles northwest of Seminole, Gaines County, Texas; construction has been delayed because of changes in the design; extension was granted to a new expiration date of December 14, 1983.

14. PSD-NM-350; Southern Union Refining Company; issued for the expansion from 31,500 barrels/day to 60,000 barrels/day to the existing refinery location on Highway 18, approximately 5 miles south of Lovington, Lea County, New Mexico; construction has been delayed due to the deterioration of economic conditions; extension was granted to a new expiration date of November 8, 1984.

15. PSD-TX-388 and PSD-TX-394; Independent Refining Corporation; issued for the expansion of the existing refinery (PSD-TX-388) and the addition of several new units (PSD-TX-394) located on Highway 124, approximately 2½ miles southwest of Hamshire, Jefferson County, Texas; construction has been delayed due to the depressed economic conditions; the extensions have been granted to new expiration

dates of March 11, 1984 (PSD-TX-388) and December 2, 1983 (PSD-TX-394).

16. PSD-TX-413; Gulf States Oil and Refining (now Koch Refining Company); issued for the expansion of the existing refinery located at 9254 Up River Road, Corpus Christi, Nueces County, Texas; construction has been delayed due to a change in ownership of the facility; extension granted to a new expiration date of December 22, 1983.

17. PSD-NM-418; Plains Electric Generation and Transmission Cooperative, Inc.; issued for the addition of a gas turbine electric generating unit to the existing Algodones Power Plant located on Highway 85, approximately 7.5 miles northeast of Bernalillo, Sandoval County, New Mexico; construction has not commenced due to significant declines in industrial and agricultural activities which has delayed the need for both new base load and peaking load generation; extension granted to a new expiration date of January 4, 1985.

18. PSD-OK-424; Union Texas Petroleum Corporation; issued for the installation of two 1,000 hp compressor engines at the existing station located on State Highway 8, approximately 1½ miles southeast of Aline, Alfalfa County, Texas; construction has been delayed due to potential changes in regulations concerning spacing of wells, and legal delays encountered in the drilling programs; extension was granted to a new expiration date of March 22, 1984.

19. PSD-TX-437; St. Regis Paper Company; issued for the modification of the existing paper mill located on Highway 103 on the east edge of Lufkin, Angelina County, Texas; construction has been delayed due to current economic conditions; extension was granted to a new expiration date of June 23, 1984.

A notice of EPA's proposed action to extend the PSD permit was published in a newspaper in the affected area of each facility. No comments were received regarding the proposed extensions. Documents relevant to the extension requests are available for public inspection during normal business hours at the Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

These extensions are final actions reviewable under Section 307(b)(1) of the Clean Air Act only in the Fifth Circuit Court of Appeals for sources located in Texas and Louisiana, and in the Tenth Circuit Court of Appeals for sources located in Oklahoma and New Mexico. Any petition for review must be filed on or before January 9, 1984.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Dated: October 23, 1983.

Dick Whittington,

P.E., Regional Administrator, Region 6.

(PR Doc. 83-30184 Filed 11-7-83; 8:45 am)

BILLING CODE 6580-50-M

FEDERAL COMMUNICATIONS COMMISSION

Westinghouse Broadcasting and Cable, Inc., et al.

Adopted: October 25, 1983.

Released: October 31, 1983.

In re Applications of Westinghouse Broadcasting and Cable, Inc. (WPCQ-TV) Charlotte, North Carolina (MM Docket No. 83-1160, File No. BPCT-811116KE), Jefferson-Pilot Broadcasting Company (WBTV) Charlotte, North Carolina (File No. BPCT-811116KF), Carolina Broadcasting Company (WSOC-TV) Charlotte, North Carolina (MM Docket No. 83-1161, File No. BPCT-8111125KG), and WCCB-TV, INC. (WCCB-TV) Charlotte, North Carolina (MM Docket No. 83-1162, File No. BPCT-8111130KG), For Construction Permits.

Memorandum Opinion and Order

1. The Commission by the Chief, Mass Media Bureau, has before it: (a) The above-captioned applications for major changes to Charlotte, North Carolina, television facilities, filed by Westinghouse Broadcasting and Cable, Inc. (Westinghouse) (licensee of WPCQ-TV, Channel 36 (NBC)), Carolina Broadcasting Company (CBC) (licensee of WSOC-TV, Channel 9 (ABC)), and WCCB-TV, Inc. (WCCB) (licensee of WCCB-TV, Channel 18 (Independent)); (b) the above-captioned application of Jefferson-Pilot Broadcasting Company (Jefferson-Pilot) for minor changes in the facilities of WBTV(TV), Channel 3 (CBS); (c) petitions to deny the applications of CBC and WCCB and informal objections to the applications of Jefferson-Pilot and Westinghouse, filed by Carolina Christian Broadcasting, Inc. (Carolina Christian), licensee of WGGT-TV, Channel 16, Greenville, South Carolina; (d) informal objections to all the applications, filed by Spartan Radiocasting Company (Spartan), licensee of WSPA-TV, Channel 7 in Spartanburg, South Carolina, and by Pappas Telecasting, Incorporated (Pappas), licensee of WHNS(TV), Channel 21 in Asheville, North Carolina; (e) a petition to deny

Westinghouse's application, filed by Sainte Broadcasting Corporation (Sainte), licensee of KCBA-TV, Channel 35, Salinas, California; (f) a petition to deny CBC's application, filed by Holston Valley Broadcasting Corporation (Holston), licensee of WKPT-TV, Channel 19, Kingsport, Tennessee; and (g) related pleadings.

2. CBC proposes to move its transmitter approximately 25.7 miles northwest of its present site and to increase its tower height to 1953 feet above the ground. WCCB proposes to locate nearby, approximately 25 miles west of its present site, to mount its antenna atop a 1940 foot tower and to increase effective radiated visual power (ERP) to 5000 kW. Westinghouse and Jefferson-Pilot propose to co-locate on a 1933 foot tower approximately 29 miles northwest of Westinghouse's present site and 6 miles northwest of Jefferson Pilot's present site, and Westinghouse proposes to increase its ERP to 5000 kW. All three transmitter sites are within 2 miles of each other.

3. The applicants contend that grant of their applications would result in substantial Grade B gain areas and population and, in the case of Jefferson-Pilot, no resulting loss area:

	Gain area		Loss Area	
	Persons	Square miles	Persons	Square miles
Westinghouse (WPCO-TV)	613,797	5,673	90,275	1,538
Jefferson-Pilot (WSTV)	914,209	5,930	0	0
CBC (WSOC-TV)	709,283	6,211	149,961	1,321
WCCB (WCCB-TV)	659,600	5,996	31,023	661

In further support of its application, Westinghouse argues that, given air traffic and spacing considerations, its proposed site is the most practical location in the area where all four stations could be commonly located to serve Charlotte.

4. In opposition, Pappas argues that the applicants cannot rely on large gains in their Grade B service area to justify grant of their applications, since such gains would be at the expense of substantial losses. Moreover, Pappas

contends that the maps submitted by the applicants to demonstrate the availability of other signals in the proposed Grade B loss areas are defective in that each assumes the grant of only its own application by indicating the present service contours of the other three Charlotte stations.² Pappas further argues that grant of the proposed applications would leave as few as two television services in part of the proposed loss area.

5. The contour maps submitted by the applicants do not give an accurate picture of the Grade B signals that would remain in the combined loss area, assuming grant of all four applications. Nevertheless, it appears that, in each case, the entire loss area would receive at least two Grade B signals.³ While the combined proposed loss area of the applicants would receive at least two Grade B network signals, wide areas would receive only two different networks due to a duplication of services. Grant of Westinghouse's, CBC's or WCCB's application would result in the removal of the only NBC, ABC, or Independent Grade B signals, respectively, in parts of the loss area, and some areas would lose their only Independent service as well as their only ABC or NBC service. Grant of CBC's and WCCB's applications would provide a first Grade B ABC network and Independent service to parts of the gain area; Westinghouse and Jefferson-Pilot, however, would provide only duplicated NBC and CBS service.

6. The Commission would generally prefer to defer to the judgments of licensees as to the selection of transmitter sites. It is the licensee, not the Commission, that has the best information on such factors as population moves, the availability and suitability of sites for broadcasting and the costs associated with moves. In fact, the Commission has recently taken action that will expand the licensee's latitude in this area. In *Suburban Community Policy*, 53 R.R. 2d 681 (1983) (reconsideration pending), among other things, it abolished the *de facto* reallocation policy, which was one factor that limited the choice of transmitter sites in some cases.

7. On the other hand, there would be a substantial loss area created if all of the

applications in this case are granted. Within that loss area, based on information submitted by the applicants, some areas would lose one or more off-the-air network services. The court has stated that any loss of service is *prima facie* contrary to the public interest, absent a showing offsetting factors. *Hall v. F.C.C.*, 237 F.2d 567 (D.C. Cir. 1956); *Television Corporation of Michigan v. F.C.C.*, 294 F.2d 730 (D.C. Cir. 1961). The present case is similar to the circumstances before us in *West Michigan Telecasters, Inc.*, 22 F.C.C. 2d 943, *recon. denied* 26 F.C.C. 2d 668 (1970), *aff'd* 460 F.2d 883 (D.C. Cir. 1972). There, the applicant proposed to change its facilities so that an additional 385,116 people would receive Grade B service from the station, but there would be loss of service to 89,182 people, 49,718 of whom would be left with only two predicted Grade B services. The Commission examined all factors and concluded that the gains, despite their size, did not outweigh the loss of service. The loss of the network service was considered particularly serious.

8. In the past, the Commission has granted applications that would create loss areas only where the applicant has shown, in addition to gain areas, other factors that would offset the losses. Factors that could be considered include the extent to which: there may be a greater need for the service in the gain area than in the loss area; the residents in the loss area, in fact, rely on the station's off-the-air service; any losses might be mitigated by existing services such as translators, low power television stations or cable television service; and the proposed facilities may result in improved safety to air navigation, reduced shadowing and improved receiver antenna orientation. See generally, *Midcontinent Broadcasting Co.*, 3 R.R. 2d 933 (1964); *WSET, Inc.*, 80 F.C.C. 2d 233 (1980). Except for a brief, conclusory statement by one of the applicants as to air safety, the applicants in this case have not submitted information as to any of these factors. Given the constraints imposed by the court, the question of whether the losses proposed by CBC, Westinghouse and WCCB will be offset by other factors is one that must be resolved in hearing. Jefferson-Pilot, however, proposes no loss area and there is no need for a hearing on its application.

9. Carolina Christian, Pappas, and Spartan argue that grant of these applications would shift the Charlotte ADI (area of dominant influence) to the west at the expense of the Asheville-Greenville-Spartanburg ADI, thereby reducing their shares of the television

¹ At the time Sainte's petition was filed, it was involved in a dispute with Teleprompter of Santa Cruz, a subsidiary of Westinghouse, concerning Sainte's right to carriage on Teleprompter's Santa Cruz, California, cable television system. Sainte's petition does not address the merits of the WPCO-TV application but, rather, repeats arguments from another, unrelated, dispute in an effort to defer Commission action on any application filed by Westinghouse. On July 29, 1982, however, the Commission granted Teleprompter's request for waiver of the signal carriage rules. *Teleprompter Corporation*, 91 F.C.C. 2d 146 (1982). Since Sainte has not shown that it is a party in interest in this proceeding, its petition to deny will be dismissed.

² Pappas alleges that the applicants made misrepresentations to the Commission by not submitting a map depicting the loss area created by the move of all four stations. However, each map was clearly labelled as to what it depicts and no issue as to misrepresentation is warranted.

³ The service contour maps are extremely complex, with more than 50 loss segments. The applicants have not extracted precise areas and described the services available to each.

market and advertising revenues and causing them to reduce their programming efforts in the public interest. Holston also complains of an adverse UHF impact here, but only with respect to CBC's application. The Commission's UHF impact policy, however, is intended to protect UHF stations against the adverse impact of changes in NHF facilities; it does not protect either a UHF or VHF station from the competition of a UHF station, nor does it protect a VHF station from the competition of another VHF. *Jersey Cape Broadcasting Corp.*, 85 F.C.C. 2d 654, 674-675 (1981), *recon. denied* 89 F.C.C. 2d 984 (1982); *Video Empresas Del Oeste, Inc.*, 25 R.R. 2d 212, 213 (1972). Rather, the Commission has treated allegations of such adverse economic impact as attempts to raise a *Carroll* issue. *Carroll Broadcasting Company v. F.C.C.*, 258 F. 2d 440 (D.C. Cir. 1958); *Gulfshore Television Corp.*, 27 R.R. 2d 1575 (1973); *Video Empresas Del Oeste, Inc.*, *supra*. Economic injury to a station is not, itself, a matter of public concern, but it may become so if the result would be a diminution or destruction of overall service to the public. In order to raise a *Carroll* issue, however, a petitioner must plead specific facts to show that:

(1) The revenue potential of the market is such that a grant will cause the petitioner to suffer a significant loss of income; (2) the effect of this loss will be to compel the petitioner to eliminate some or all of its public service programming; and (3) this loss of programming will not be offset by the increased non-network programming proposed to be offered by the applicant. [*WLVA, Inc. v. F.C.C.*, 459 F. 2d 1286, 1297 (D.C. Cir. 1972)]

10. Several of the objections raised herein are realistically *Carroll* issue arguments rather than UHF impact. These situations include the informal objections filed by Spartan (licensee of a VHF station) against all of the applicants, plus Carolina Christian's and Pappas' objections against Westinghouse and WCCB (licensees of UHF stations). In these instances, the objectors have not made the type of showing traditionally required to raise a *Carroll* issue. For example, they have not demonstrated that the revenue potential of the Asheville-Greenville-Spartanburg market is such that grants of the applications will cause the petitioners to suffer a significant loss of income so as to reduce their public service programming. Further, none of the objectors has shown that any reduction in their public service programming would not be offset by an increase in the non-network programming provided by the

applicants. Consequently, Carolina Christian and Pappas (with respect to Westinghouse and WCCB) and Spartan (with respect to all of the applicants) have not pleaded specific facts sufficient to raise a *Carroll* issue.

11. Next to be considered are those situations where the Commission's UHF impact policy could be applied; i.e., Carolina Christian's and Pappas' informal objections against Jefferson-Pilot and CBC and Holston's petition to deny against CBC. As stated in *WSET, Incorporated*, 80 F.C.C. 2d 233 (1980), the Commission's policy of protecting UHF stations or allocations is a developing one which changes as circumstances and market conditions change. In the evolution of this policy, the Commission has stated that the time has passed when it was appropriate to insulate every UHF station or potential station from any possible small VHF change. *WFMY Television Corp.*, 59 F.C.C. 2d 1010 (1976); *Television Table of Assignments: Mt. Vernon, Ill.*, 17 R.R. 2d 1620, 1630 (1969), *affirmed sub nom.*, *Plains Television Corporation v. F.C.C.*, 440 F. 2d 276 (D.C. Cir. 1971). A petitioner must demonstrate some nexus between the fact of extended VHF service and the claimed specific adverse consequences to the public interest. See e.g., *KTVO, Inc.*, 47 F.C.C. 2d 914, 915 (1974). In this regard, the Commission requires a petitioner to specify the percent of viewers it would expect to lose by grant of the application, link that loss to an expected loss in advertising revenues and gross revenues and demonstrate the specific adverse consequences to the public interest of such revenue losses. Further, if the losses would require the reduction of news, public affairs, or other local programming, the petitioner must demonstrate why it could not reduce other programming. *WFMY Television Corp.*, *supra*.

12. Other than Holston's engineering statement describing the projected overlap of WSOC-TV with WKPT-TV, none of the objectors has shown, even in general terms, the audience and revenue losses to be expected by grant of the Charlotte applications, nor have they stated which programming, if any, would have to be reduced as a consequence of such losses. Consequently, the objectors have not pleaded facts sufficient to raise a UHF impact issue.

13. Spartan further argues that grant of Jefferson-Pilot's and CBC's applications might create new co-channel and adjacent channel interference to translators licensed to it and to Wometco Skyway Broadcasting Company (licensee of WLOS-TV,

Asheville) and Metromedia, Inc. (licensee of WFBC-TV, Greenville). Section 74.702(b) of the Commission's Rules, however, provides that changes in the facilities of existing television stations may be made without regard to television translator stations and that where interference is caused, it is the obligation of the translator, as a secondary service, to eliminate the interference or file an application for a change in channel assignment. Consequently, if interference should occur, the translators, not Jefferson-Pilot and CBC, would have to remedy it.

14. In conclusion, it cannot be determined whether the loss areas proposed by CBC, Westinghouse, and WCCB will be offset by other factors, and the statutory finding that grant of those applications would serve the public interest, convenience and necessity cannot be made. Therefore, those applications must be designated for hearing in a consolidated proceeding on the issues set out below. Otherwise, the Commission finds that the petitioners and the objectors have raised no substantial and material questions of fact which would warrant the specification of additional issues. As a result, we find that Jefferson-Pilot is qualified to construct and operate as proposed and that grant of its application would serve the public interest, convenience and necessity.

15. Accordingly, it is ordered, That the petition to deny filed by Sainte Broadcasting Corporation is dismissed.

16. It is further ordered, That the petitions to deny and informal objections filed herein are granted to the extent indicated and are otherwise denied.

17. It is further ordered, that the application of Jefferson-Pilot Broadcasting Company is granted.

18. It is further ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of Westinghouse Broadcasting and Cable, Inc., Carolina Broadcasting Company, and WCCB-TV, Inc. 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 the areas and population which will gain or lose predicted Grade B television service in the event of a grant of one or more of the applications and to determine the number of other predicted Grade B television broadcast services available to such areas and population.

2. To determine, in light of the evidence adduced pursuant to Issue 1 above, the extent of areas and population which would gain their first of lose their only predicted Grade B network or independent television service in the event of a grant of any of the applications and to determine whether factors exist which would offset any deprivation of service.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether grant of the applications, or any of them, would serve the public interest, convenience and necessity.

19. It is further ordered, that Carolina Christian Broadcasting, Inc., Spartan Radiocasting Company, Pappas Telecasting, Incorporated, and Holston Valley Broadcasting Corporation are made parties respondent in this proceeding.

20. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the parties respondent 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.

21. 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.

22. It is further ordered, that the initial burden of presenting evidence on the issues specified above shall be on Carolina Christian Broadcasting, Inc., Spartan Radiocasting Company, Pappas Telecasting, Incorporated, and Holston Valley Broadcasting Corporation; and thereafter, the burden of proceeding with the introduction of evidence and the ultimate burden of proof on said issues shall be on the applicants.

Federal Communications Commission.

James C. McKinney,
Chief, Mass Media Bureau.

[Report No. 1432]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

October 31, 1983.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the date for filing oppositions has expired.

Subject: in the Matter of MTS and WATS Market Structure. (CC Docket No. 78-72, Phase I)

Filed by:

Thomas N. Wies, Attorney for Public Service Board of Vermont on 9-22-83.

James R. Kiernan, General Counsel & John F. Nestor, III, Special Assistant Attorney General for Massachusetts Department of Public Utilities on 9-22-83.

Randall B. Lowe & Steven H. Nemerovski, Attorneys for Combined Network, Inc., on 10-13-83.

Bernard C. Topper, Jr., Eugene E. Mulhern, Mitchell F. Brecher, Richard E. Wiley & Philip V. Pemet, Attorneys for GTE Corporation on 10-11-83.

James M. Tobin, Vice President & General Counsel for Lexitel Corporation on 10-17-83.

Richard C. Schramm & Thomas L. Welch, Attorneys for Bell Atlantic Corporation on 10-21-83.

William D. Baskett, III & John K. Rose, Attorneys for Cincinnati Bell Telephone Company on 10-21-83.

Daniel J. Harrold & Jay Witkin, Attorneys for International Communications Association on 10-21-83.

Robert L. Barada, Marlin D. Ard & Randall E. Cape, Attorneys for The Pacific Telephone and Telegraph Company on 10-21-83.

William D. English, F. Thomas Tuttle, Kevin H. Cassidy & Richard M. Singer, Attorneys for Satellite Business Systems on 10-21-83.

Robert Fitzgerald, Vice President & General Counsel, Southern Bell Telephone and Telegraph Company, W. M. Booker, Vice President and General Counsel, South Central Bell Telephone Company, John R. Beasley, Associate General Counsel & Hubert F. Owens, Solicitor for BellSouth Corporation on 10-21-83.

Peter Tannenwald, Attorney for Satelco Incorporated, Teltec Saving

Communications Co. & Tel Systems Corporation on 10-21-83.

Leo I. George, William G. Milne & Daniel A. Huber, Attorneys for U.S. Telephone, Inc., on 10-21-83.

Leo I. George, Attorney for Telesphere Network, Inc., on 10-21-83.

Robert W. Barker, Robert B. McKenna & Luisa L. Lancetti, Attorneys for Pacific Northwest Bell Telegraph Company, Mountain States Telephone Company & Northwestern Bell Telephone Company on 10-21-83.

Victor J. Toth, Attorney for American Communications, Ltd on 10-21-83.

Victor J. Toth & Mary Dominiak, Attorneys for Association of Long Distance Telephone Companies on 10-21-83.

Saul Fisher & Melvin A. Cohen, Attorneys for NYNEX Corporation on 10-21-83.

Allie B. Latimer, General Counsel, Charles V. Curcio, Assistant General Counsel, Sumner J. Katz, Attorney, John S. Gosnell, Technical Consultant, Gerald P. Carmen, Administrator of General Services & Frank J. Carr, Assistant Administrator, Office of Information Resources Management for General Services Administration and J. Randolph MacPherson, Regulatory Counsel for Department of Defense on behalf of all Federal Executive Agencies on 10-21-83.

Stuart M. Gerson & David H. Larry, Attorneys for American Hospital Association on 10-21-83.

Michael H. Bader, Kenneth A. Cox, William J. Byrnes & Robert E. Conn, Attorneys for MCI Telecommunications Corporation on 10-21-83.

Robert F. Heath for RCA Communications, Inc., on 10-21-83.

Joe D. Edge, Attorney for Eagle Telecommunications, Inc., on 10-21-83.

William C. Sullivan, Linda S. Legg, John W. Kelly, Jr. & Jeanne A. Fischer, Attorneys for Southwestern Bell Telephone Company on 10-21-83.

John L. Bartlett, Howard D. Polsky & Robert J. Butler, Attorneys for Aeronautical Radio, Inc., on 10-24-83.

Brenda L. Fox, Carol A. Melton, Robert St. John Roper, Michael S. Schooler & Timothy C. Sloan, Attorneys for National Cable Television Association, Inc., on 10-24-83.

John L. Bartlett, Attorney for Securities Industry Automation Corporation on 10-24-83.

J. Roger Wollenberg, William T. Lake, Roger M. Witten & David M. Frankford, Attorneys & J. Gordon Walter & Wette A. Horne for

International Business Machines Corporation on 10-24-83.
 James R. Hobson & Theodore D. Lindgren, Attorneys for GTE Mobilnet Incorporated on 10-24-83.
 Tedson J. Meyers, Michael W. Faber, Joel S. Winnik & Robert Carson Godbey, Attorneys for the City of New York on 10-24-83.
 Conrad R. Reddick, Charles R. Cutler & Alfred Winchell Whittaker, Attorneys for American Information Technologies Corporation on 10-24-83.
 Tedson J. Meyers, Michael W. Faber & Joel S. Winnik, Attorneys for Bunker Ramo-Eltra Corp., on 10-24-83.
 John A. Ligon, Attorney for United States Transmission Systems, Inc., on 10-24-83.
 Michael Yourshaw, Attorney for the Associated Press Commodity News Services, Inc., on 10-24-83.
 William Page Montgomery, Economic Consultant & Joseph M. Kittner & James S. Blaszk, Attorneys for Ad Hoc Telecommunications on 10-24-83.
 William J. Tricarico, Secretary, Federal Communications Commission.
 [FR Doc. 83-30135 Filed 11-7-83; 8:45 am]
 BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Cleveland Community Savings Co., Cleveland, Ohio; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Cleveland Community Savings Company, Cleveland, Ohio, on October 27, 1983.

Dated: October 31, 1983.

John F. Ghizzoni,
 Assistant Secretary.

[FR Doc. 83-30160 Filed 11-7-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 75 (stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Blaser & Mericle of Toledo, Inc., 1946 N. 13th Street, Suite 3660, Toledo, OH 43624
 * Officers: William M.B. Ajemian, President; James J. Conway, Secretary/Director; Barbara A. Blaser, Vice President; George Vislosky, Stockholder
 James Costello d.b.a. Amco International, 530 East North Belt, Suite 316, Houston, TX 77060
 Cari World International, Inc., 7442 N. SW. 55th Street, Miami, FL 33166
 Officers: Allen I. Falla, President; Patricia E. Falla, Secretary/Treasurer

Dated: November 2, 1983.

Francis C. Hurney,
 Secretary.

FR Doc. 83-30176 Filed 11-7-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 2, 1983.

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 Extension With Revision

1. Report title: Report of Indebtedness of Executive Officers and Principal Shareholders and their related interests to Correspondent Banks
 Agency form number: FFIEC 004
 Frequency: Annual
 Reporters: State member banks
 Small businesses are not affected.
 General description of report:
 Respondent's obligation to reply is mandatory [12 U.S.C. 1972]; a pledge of confidentiality is promised [5 U.S.C. 522(b)(4)].

Executive officers and principal shareholders of member banks who are indebted to correspondent banks must file reports, form FFIEC 004, on such indebtedness to them or their related interests. State member banks are required to retain these reports for a period of three years.

Board of Governors of the Federal Reserve System, November 2, 1983.

William W. Wiles,
 Secretary of the Board.

[FR Doc. 83-30129 Filed 11-7-83; 8:45 am]

BILLING CODE 6210-01-M

Proposal To Act as a Futures Commission Merchant and to Act as a Registered Securities Broker-Dealer; Citicorp

Citicorp, New York, New York, 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 engage as a futures commission merchant in executing and clearing options on futures contracts on major commodity exchanges, and for permission to engage as a registered securities broker-dealer in executing and clearing options on commodities and financial instruments on major securities exchanges. The commodities and financial instruments on which the options are based are bullion, U.S. government securities, foreign exchange, and negotiable money market instruments.

These activities would be conducted by Applicant's subsidiary, Citicorp Futures Corporation, from offices in New York, New York and Chicago, Illinois, on behalf of nonaffiliated persons in the United States and abroad.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing had determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The proposed activities have not been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies. However, Applicant believes the proposed activities to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, in part because the proposed activities are, in the Applicant's opinion, operationally or functionally similar to the activity of acting as a futures commission merchant for futures contracts in the above-mentioned commodities and non-equity financial instruments, an activity that has been conditionally approved by the Board in Orders dated July 1, 1982, regarding J. P. Morgan & Co. Incorporated, New York, New York (68 *Fed. Res. Bull.* 514), September 20, 1982, regarding Bankers Trust New York Corporation, New York, New York (68 *Fed. Res. Bull.* 651), and November 30, 1982, regarding Applicant (68 *Fed. Res. Bull.* 776). The Applicant also bases its opinion in part on the Board Order dated August 1, 1983, regarding J. P. Morgan & Co. Incorporated (69 *Fed. Res. Bull.* 733), in which the Board conditionally approved the activity of acting as a futures commission merchant in the execution and clearance of options on futures contracts in bullion and in U.S. Government securities traded on certain major commodity exchanges. The Board has not previously approved the activities of

executing and clearing options on futures contracts in foreign exchange and negotiable money market instruments or options on the commodities and instruments underlying the futures contracts. Further, the Board has not previously approved the activities of acting as a futures commission merchant and as a securities broker-dealer through a single subsidiary.

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and 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 these questions must be accompanied by a statement of the reasons why 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 the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, no later than December 2, 1983.

Board of Governors of the Federal Reserve System, November 2, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-30128 Filed 11-7-83; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0490]

Privacy Act of 1974; Proposed New System of Records

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Board of Governors of the Federal Reserve System hereby gives notice of a new System of Records that it proposes to have maintained by its contractor, the University of Michigan's Survey Research Center. The Board has also filed a new System report with the Office of Management and Budget, the

Speaker of the House, and the President of the Senate.

Public comments are invited on this notice on or before December 30, 1983, addressed to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Constitution Ave. at 20th Street, NW., Washington, D.C. 20551. All material should be in writing and should contain the docket number R-0490. All written documents will be available for public inspection from 8:45 a.m. to 5:15 p.m. at the Office of the Secretary, Public Information Office, Room B-1122, at the above address.

By order of the Board of Governors,
October 31, 1983.

William W. Wiles,

Secretary of the Board.

BGFRS-20

SYSTEMS NAME:

SRC—Surveys of Consumer Finances and Consumer and Business Attitudes

SYSTEM LOCATION:

Survey Research Center, University of Michigan, 426 Thompson Street, Ann Arbor, Michigan 48106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include data on a national sample of approximately 5,000 households that voluntarily respond to a detailed questionnaire during face to face interviews for a 1983 comprehensive survey of consumer finances. These households will include about 12,000 individuals. Smaller scale telephone surveys will include data from national samples of about 700 households and about 700 retailers, plus an annual survey conducted once a year during some years that will sample about 5,000 households. All responses to telephone surveys are also voluntary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey Research Center (SRC), the independent contractor, will maintain six sets of files, containing the data that the survey were designed to collect.

1. The coversheet file include the names and addresses of respondents. A unique identifying number links this file to the other files. Only this number permits identification of individuals. This file will be maintained on paper. In the case of the 1983 comprehensive survey of consumer finances, the coversheet file will also include the names of pension providers and social security members for heads of households and spouses who agree to give this information.

2. The questionnaire file consists of non-individually identifiable information, except for the linking number attached in the case of the 1983 comprehensive survey, that include: responses to survey questions, including in the case of the 1983 comprehensive survey, questions on assets, liabilities, work status, work history, and financial behavior. This file will be maintained on paper.

3. The respondent control file consists of respondent names, addresses, and identification numbers. This file will be maintained on magnetic tape.

4. The data file consists of non-individually identifiable information, except for the linking number attached to the 1983 comprehensive survey data, that include coded responses to survey questions. This file will be maintained on magnetic tape.

5. The merged data file consists of non-individually identifiable information, except for the linking number attached to the 1983 comprehensive survey data, that include coded responses to survey questions; and for the 1983 comprehensive survey, coded information about the respondent's pension plan. This file will be maintained on magnetic tape.

6. One file is unique to the 1983 comprehensive survey of consumer finances: The pension provider control file. This file consists of the unique identifying numbers, the names of pension providers, the occupational titles of the respondents, and the social security numbers of respondents who have agreed to give this information. This file will be maintained on magnetic tape.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 225a; and 15 U.S.C. 1601 note.

PURPOSE:

The proposed new system will provide data on consumer financial status and behavior, including assets and liabilities; and in the case of the 1983 comprehensive survey, hypothetical future pension benefits. The system will also provide information updated periodically or at specific times concerning consumer and business attitudes toward finances and credit. This system will be extensively used by government agencies and private social scientists to address a variety of questions about the financial status and well-being of households and businesses—such as questions related to household assets and savings—and in the case of the 1983 comprehensive

survey, additional questions related to work status and pensions.

This system will be maintained for statistical research purposes only and will not be used in whole or in part in making any determination about benefits or other rights of any identifiable individual. It will consist solely of "statistical records" as defined in the Privacy Act (5 U.S.C. 552(a)(6).)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk, paper and card records.

RETRIEVABILITY:

The contractor performs linkage between the data sets through a number common to both the identified data, and the non-individually identified data only for the purposes of validation of data, matching and management of data collection.

SAFEGUARDS:

The contractor stores the cover sheets containing individual identifiers separately from the questionnaires in locked file cabinets, access to which will be restricted to authorized SRC personnel only. Completed interviews are stored separately in locked file cabinets. Magnetic data are further protected by special account numbers and passwords.

The contractor conforms to the National Bureau of Standard's "Computer Security Guide for Implementation of the Privacy Act of 1974" and to the Department of Health and Human Services' ADP Systems Manual, "Part 6, ADP System Security." Access to the linkage associated with identifiable data for individuals is subject to the specific approval of the Project Director at SRC. Information with individual identifiers will be used to verify that records and personal statements are in substantial agreement and that critical data are not missing. Should there be apparent discrepancies, the correct information could be identified through follow-up. These uses will be performed only by persons employed by SRC and then only on a "need to know" basis.

For the 1983 comprehensive survey, information with individual identifiers will also be used to retrieve general, non-individual-specific information on the pension plans in which survey respondents participate, for those respondents who agree to respond to these questions. These data will be used to supplement the data derived from interviews for research purposes only. Data on plans will be obtained from administrative files of the Department of Labor and from a supplemental instrument addressed to pension providers. The respondents will not be identified to the Department of Labor or to the pension providers; the instrument will gather only general information about plan characteristics.

Non-individually identifiable data are used for analysis in support of overall surveys. Research topics include: The effect of laws regulating consumer credit; the impact of possible options for deregulation of financial markets; the effects of entitlements to retirement income on consumer saving behavior. The aggregated data without personal identifiers are available to any member of the public or to any agency of the government.

The Board of Governors of the Federal Reserve System and other sponsors of the 1983 comprehensive survey (the Department of the Treasury, the Department of Health and Human Services, the Federal Trade Commission, the Federal Deposit Insurance Corporation, and the Department of Labor) may conduct analyses of non-individually identifiable data from this survey, as necessary.

RETENTION AND DISPOSAL:

Files that contain individually identifiable information will be destroyed by shredding or degaussing no more than five years after field work for the 1983 comprehensive survey is completed or at such time as it is determined that no further validation of the data will be undertaken.

There are no plans for the destruction of the non-individually identifiable data (files 4 and 5 as described in the section above entitled "Categories of individuals covered by the system".)

SYSTEMS MANAGER AND ADDRESS:

Glenn Canner, Project Officer, Survey of Consumer Finances, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Room M-1142, 20th and C Sts. NW, Washington, D.C. 20551.

NOTIFICATION PROCEDURE:

An individual requesting notice as to whether this System of Records contains information pertaining to him or her should write to the Government Project Officer, at the address below, enclosing a notarized statement of his or her full name and current address. Simultaneously, with requesting notification of inclusion in the System of Records, the individual may request record access as described in the following section, "Record access procedures".

Glenn Canner, Project Officer, Survey of Consumer Finances, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Room M-1142, 20th and C Sts., NW, Washington, D.C. 20551.

RECORD ACCESS PROCEDURES:

Individuals who, through the notification procedures set out above, have established that the System of Records contains information pertaining to them may request access to those records by writing to the Government Project Officer at the address given above. The Government Project Officer will notify the individual as to the place and time for access to the records(s). If the requester prefers, and if the information requested is not too voluminous, the material may be mailed.

CONTESTING RECORD PROCEDURES:

Individuals who seek to contest records in this System should contact the Government Project Officer at the address given above, reasonably identify the record(s), specify the information being contested, the rationale for the challenges, and supply the information to be substituted.

RECORD SOURCE CATEGORIES:

Survey information will typically be obtained from telephone surveys of households and retailers. However, in the case of the 1983 comprehensive survey, information will be obtained from face-to-face interviews with household members and with the providers of their pensions, and from files on pension plans maintained by the Department of Labor.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-30127 Filed 11-7-83; 8:45 am]

BILLING CODE 5210-01-M

GENERAL SERVICES ADMINISTRATION**Office of the Administrator****Advisory Board; Meeting**

Notice is hereby given that the GSA Advisory Board's subcommittee on Organization and General Management will meet in Room 2416, 26 Federal Plaza, New York, New York on November 17, 1983. The meeting is scheduled to begin at 9:00 a.m. and conclude at 4:30 p.m. Discussions will revolve around GSA initiatives to address the agency's internal training requirements, increase organizational productivity, establishment of a new Board subcommittee on finance, agency plans for addressing Federal telecommunications requirements following the AT&T divestiture and efforts to expand public outreach programs administered by the National Archives and Records Service.

This notice is being provided less than 15 days in advance due to scheduling difficulties.

For further information, contact Mr. Thomas J. Simon at (202) 523-1614.

Dated: November 4, 1983.

Roger C. Dierman,
Deputy Associate Administrator.

[FR Doc. 83-30282 Filed 11-7-83; 6:45 am]

BILLING CODE 5820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control****Development of New Control Methods; Open Meeting; Changed Date**

Notice of the open meeting to review and discuss a project on the development of new control methods was published in the *Federal Register* (48 FR 46855) on Friday, October 14, 1983.

The date of the meeting has been changed from November 10, 1983, to November 14, 1983. All other information concerning this meeting, as published on October 14, 1983, is unchanged.

Dated: November 3, 1983.

William H. Foege,
Director, Centers for Disease Control.

[FR Doc. 83-30315 Filed 11-7-83; 8:45 am]

BILLING CODE 4160-19-M

Office of Human Development Services**Administration for Children, Youth and Families Head Start Bureau; Amendment of Program Announcement No. 13.600-841 Possible Availability of Financial Assistance**

AGENCY: Office of Human Development Services, HHS.

ACTION: Amendment of announcement of possible financial assistance to establish or expand Head Start projects.

SUMMARY: This document amends Program Announcement No. 13.600-841 published in the *Federal Register* on Wednesday, September 28, 1983 (48 FR 44440), to reflect the increase in the amount of funds available as a result of the passage of the Department's appropriation bill and to provide the public with an opportunity to comment on the announcement.

SUPPLEMENTARY INFORMATION: On September 28, 1983, the Administration for Children, Youth and Families (ACYF) published an announcement that competing applications would be accepted to establish new Head Start projects or to expand enrollment in current Head Start programs. The September 28 program announcement contained an estimate of the Fiscal Year 1984 funding allotments available for each State for the purpose of establishing or expanding Head Start programs and for other projects. That estimate was based on the Fiscal Year 1984 budget request for Head Start purposes.

Subsequent to publication of the program announcement, the Congress passed, and President Reagan signed, the Fiscal Year 1984 appropriation for the Department of Health and Human Services. As a result of the appropriation, the approximate amount available for Head Start expansion in Fiscal Year 1984 will be \$74,000,000 an increase of \$9,900,000 from the estimate included in the September 28 program announcement. To reflect the increase in the amount of funds available for Head Start expansion, the table of estimated minimum funds available to States has been revised as follows:

Region		
I	Connecticut	\$245,013
	Maine	246,358
	Massachusetts	778,041
	New Hampshire	144,037
	Rhode Island	225,073
	Vermont	96,803
II	New Jersey	2,017,024
	New York	6,510,060
	Puerto Rico	3,774,247

Region	
III Delaware	\$194,046
District of Columbia	297,990
Maryland	1,026,585
Pennsylvania	2,923,335
Virginia	978,783
West Virginia	322,113
IV Alabama	1,242,854
Florida	2,667,650
Georgia	1,799,348
Kentucky	460,240
Mississippi	473,583
North Carolina	559,069
South Carolina	857,166
Tennessee	1,093,256
V Illinois	2,443,420
Indiana	1,372,562
Michigan	3,391,888
Minnesota	847,878
Ohio	2,735,772
Wisconsin	1,206,765
VI Arkansas	824,058
Louisiana	1,881,428
New Mexico	550,179
Oklahoma	460,766
Texas	4,380,778
VII Iowa	731,545
Kansas	552,019
Missouri	990,611
Nebraska	345,913
VIII Colorado	214,481
Montana	190,721
North Dakota	166,073
South Dakota	247,412
Utah	474,952
Wyoming	24,017
IX Arizona	620,469
California	7,984,311
Hawaii	324,620
Nevada	128,735
X Alaska	39,531
Idaho	293,780
Oregon	827,617
Washington	1,054,069
Indian and migrant projects	3,110,000
Discretionary funds from secretary's reserve	6,850,000
Total for expansion	74,000,000

In addition, since Head Start grantees have been given an opportunity to comment on the announcement, we believe it is appropriate to provide the general public with a similar opportunity.

Comments on Program Announcement No. 13.600-841 may be submitted by December 2, 1983 to: Clennie Murphy, Acting Director, Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013.

The closing date for receipt of applications remains the same, December 16, 1983.

Dated: November 3, 1983.

Lucy C. Briggs,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: November 3, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 83-30222 Filed 11-7-83; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

General Clinical Research Centers Committee; Amended Notice of Meeting

Notice is hereby given of a change in the Notice of Meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), November 14-15, 1983, Conference Room 9, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD, which was published in the Federal Register on October 24, 1983 (48 FR 49101-2).

The Notice of Meeting read "closed to the public November 14, 1983, from 8:30 a.m. to adjournment." It should have read "closed to the public November 14, 1983, from approximately 12:00 noon to recess, and on November 15, 1983, from 8:30 a.m. to adjournment."

The meeting will be open to the public from 9:00 a.m. to 12:00 noon, November 14, 1983.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: November 1, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-30123 Filed 11-7-83; 8:45 am]

BILLING CODE 4140-01-M

Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, January 17, 1984. The meeting will be held in Conference Room B119, Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland 20205.

This meeting will be open to the public on January 17 from 9:00 a.m. to adjournment to discuss new initiatives and program policies and issues. Attendance by the public is limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of meetings and rosters or committee members. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20205, phone (301)

496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 1, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-30124 Filed 11-7-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wyoming; Extension of Public Comment Period on Notice of Field Test of Sodium Concessionary Leasing and Request for Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extended comment period.

SUMMARY: Notice of the field test of sodium concessionary leasing was published in the Federal Register on Wednesday, August 3, 1983 (48 FR 35175). Since the public meeting on the matter could not be held until November 2, 1983, the comment period is hereby extended from October 3, 1983, to December 19, 1983.

DATE: Persons wishing to submit comments or suggestions on the proposal must do so in writing and to be received no later than December 19, 1983 at the office listed below.

ADDRESS: Comments and suggestions should be sent to: Chief, Branch of Solid Minerals, Bureau of Land Management (924), P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Jim H. Taylor (307) 772-2085, or FTS 328-2085.

Paul D. Leonard,

Associate State Director.

[FR Doc. 83-30177 Filed 11-7-83; 8:45 am]

BILLING CODE 4310-84-M

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Grand Junction District

Grazing Advisory Board will be held on Thursday, December 8, 1983.

The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 50629 West Highway 6 and 24, Glenwood Springs, Colorado.

The agenda for the meeting will include: (1) Minutes of the previous meeting, (2) allotment categorization in the Grand Junction Resource Area, (3) cooperative management agreements, (4) film "Long Shot," (5) recognition of Leonard Horn, (6) slide show on prescribed fires, (7) discussion of advisory board contributed funds, (8) status of current range improvement projects, (9) new range improvement project proposals (10) public presentations, and (11) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:30 and 4:00 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501, by December 5, 1983. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 243-6552.

Richard D. Freel,
District Manager Associate.

[FR Doc. 83-30174 Filed 11-7-83; 8:45 am]
BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability.

SUMMARY: OSM is announcing the availability of five annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA). The five reports, covering the States of Indiana, New Mexico, North Dakota, Tennessee, and Wyoming, were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: *Addresses:* Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Indiana: Indianapolis Field Office,

Office of Surface Mining, Federal Building and U.S. Court House, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204, Telephone: (317) 269-2600

New Mexico: Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87012, Telephone: (505) 766-1486

North Dakota and Wyoming: Casper Field Office, Office of Surface Mining, P.O. Box 1420, Mills, Wyoming 82644, Telephone: (307) 328-5830

Tennessee: Knoxville Field Office, Office of Surface Mining, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 523-9532

Background

Under Section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. OSM has developed an evaluation policy, in consultation with the States, which is implemented primarily through OSM's Field Offices. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress. The schedule for the reports calls for staggered completion dates.

OSM has now completed all 24 evaluation reports for this year. Notices announcing the availability of the first 19 reports were published in the *Federal Register* on August 23, 1983 (48 FR 38317), September 12, 1983 (48 FR 409059), and October 12, 1983 (48 FR 46454). The Indiana, North Dakota, Tennessee and Wyoming reports were completed and sent to Congress October 14, 1983. The New Mexico report was completed and sent to Congress on October 27, 1983. These final reports are now publicly available.

Dated: November 1, 1983.

James R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-30172 Filed 11-7-83; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations; Arizona et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 28, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forward to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by November 23, 1983.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Navajo County

Winslow vicinity, Chevelon Creek Bridge, Chevelon Creek, SE of Winslow

Yavapai County

Prescott, Hotel Vendome, 230 S. Cortes

CALIFORNIA

San Francisco County

San Francisco, Warren, Russell, House, 465-467 Oak St. and 368 Lily St.

CONNECTICUT

Fairfield County

Danbury, Main Street Historic District, Boughton, Elem, Ives, Keeler, Main, West and White Sts.

Hartford County

East Hartford, St. John's Episcopal Church, 1160 Main St.
Hartford, Ann Street Historic District, Allyn, Ann, Asylum, Church, Hicks and Pearl Sts.

Hartford, *Wethersfield Avenue Car Barn*, 331 Wethersfield Ave.

New London County

Norwich, *Telephone Exchange Building*, 23 Union St.

GEORGIA

Mitchell County

Baconton vicinity, *Bacon Family Homestead*, W. Durham St. and Albany Bainbridge Stage Rd.

Baconton vicinity, *Baconton Commercial Historic District (Baconton MRA)*, E. Walton and E. Durham Sts., N. Railroad and S. Railroad Aves., and GA 3

Baconton vicinity, *Jackson, George W., House (Baconton MRA)*, 102 S. Jackson St.

Baconton vicinity, *South Railroad Historic District (Baconton MRA)*, S. Railroad Ave., GA 3, and Seaboard Coast Line RR tracks

Baconton vicinity, *Walton Street-Church Street Historic District (Baconton MRA)*, Walton and Church Sts.

IOWA

Scott County

Davenport, *Linden Flats (Davenport MRA)*, 219 Scott St.

MASSACHUSETTS

Berkshire County

Great Barrington, *Monument Mills*, Park and Front Sts.

Stockbridge, *Villa Virginia*, Ice Glen Rd.

Dukes County

Edgartown, *Edgartown Village Historic District*, Bounded by Water St. (North and South) and Peases Point Way (North and South)

Essex County

Peabody, *Southwick House*, 151 Lowell St.

Hampden County

Westfield, *United States Whip Company Complex*, 24 Main St.

Middlesex County

Framingham, *Ellis, Moses, House*, 283 Pleasant St.

Plymouth County

Scituate, *James, Capt. Benjamin, House*, 301 Driftway

MICHIGAN

Alpena County

Alpena, *Alpena County Court House*, 720 Chisholm Ave.

Wayne County

Detroit, *Cary Building*, 229 Gratiot Ave.

Detroit, *Fort Shelby Hotel*, 525 W. Lafayette St.

Detroit, *Merchants Building*, 206 E. Grand River Blvd.

MISSISSIPPI

Amite County

Liberty vicinity, *McGehee House*, SE of Zion Hill

Hinds County

Jackson, *Armour Company Smokehouse and Distribution Plant*, 320 W. Pearl St.

Jackson, *Belhaven Heights Historic District*, Irregular area along Bellevue Place, N. Jefferson, Madison, and Morningside Sts.

NEBRASKA

Lancaster County

Lincoln, *Hotel Capital*, 139 N. 11th St.

NORTH CAROLINA

Edgecombe County

Battleboro vicinity, *Old Town Plantation*, Off N C 97

Harnett County

Dunn, *Lee, Gen. William C. House*, 209 W. Divine St.

Mecklenburg County

Charlotte, *Morrocroft*, 2525 Richardson Dr.

Rockingham County

Reidsville, *Penn House*, 324 Maple Ave.

OHIO

Franklin County

Columbus, *Columbus Near East Side Historic District—Parsons Avenue (Boundary Increase)*, 43-125

Parsons Ave. including 684 Oak St. and 690 Franklin Ave.

Columbus, *Orton Memorial Laboratory*, 1445 Summit St.

Columbus, *Pythian Temple and James Pythian Theater*, 861-867 Mt. Vernon Ave.

Hamilton County

Cincinnati, *Bells-Longworth Historic District*, Roughly bounded by Ezzard Dr., Central Ave., and

Mound and Old Court Sts.

Cincinnati, *Times-Star Building*, 800 Broadway

Mahoning County

Poland Village, *White Bridge*, Off OH 616 crossing Yellow Creek

Montgomery County

Centerville vicinity, *Normandy Farms*, 450 W. Alex-Bell Rd.

Dayton, *Joyce, Jacob O., House*, 6 Josie St.

Scioto County

Portsmouth, *Second Street Historic District*, 2nd St.

OREGON

Deschutes County

Bend, *Bend Amateur Athletic Club Gymnasium*, NGE of Wall and Idaho Sts.

Douglas County

Roseburg vicinity, *Curry, Nathaniel, House*, 1458 Quail Lane

Hood River/Multnomah/Wasco Counties

Troutdale, *Cascade Locks*, Hood River, and Mosier, *Columbia River Highway Historic District*, Roughly bounded by the Sandy Rio Bridge, Troutdale, Multnomah County on the west, the Chenoweth Creek Bridge, Dalles, Wasco County on the east

Jackson County

Medford vicinity, *Hanley, Michael, Farmstead*, 1053 Hanley Rd.

Lane County

Eugene, *Lane County Clerk's Building*, 740 W. 13th Ave.

TENNESSEE

Davidson County

Nashville, *Fifth Avenue Historic District*, Roughly bounded by Church and Union Sts., 4th, 5th, and 6th Aves.

Obion County

Union City, *Deering Building*, 106 1st St.

Shelby County

Memphis, *Clancy, Cornelius Lawrence, House*, 911 Kerr Ave.

TEXAS

Harris County

Houston, *Temple Beth Israel*, 3517 Austin St.

WASHINGTON

Spokane County

Spokane, *U.S. Post Office, Courthouse and Custom House*, West 904 Riverside Ave.

WISCONSIN

Waukesha County

Waukesha, *McCall Street Historic District (Waukesha MRA)*, McCall and James Sts., and N. East and Hartwell Aves.

[FR Doc. 83-30185 Filed 11-7-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-151 (Preliminary)]

Certain Hot-Rolled Carbon Steel Plate From the Republic of Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: October 31, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation 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 United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of the hot-rolled carbon steel plate provided for in item 607.6615 of the

Tariff Schedules of the United States Annotated, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Zeck, Office of Investigations, U.S. International Trade Commission, 701 E St. NW., Washington, D.C. 20436, telephone 202-523-0339.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 31, 1983, by counsel on behalf of the Gilmore Steel Corp., Portland, Ore. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by December 14, 1983 (19 CFR 207.17).

Participation.—Persons wishing to participate in this investigation 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 person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation 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. 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 this investigation 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 29, 1983, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements

must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 22, 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 the staff investigator, Ms. Judith Zeck (202-523-0339), not later than November 18, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection.—A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular 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.

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). Further information concerning the conduct of the conference will be provided by Ms. Zeck.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 2, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30153 Filed 11-7-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30296]

Rail Carriers; Nezperce Railroad Company; Abandonment Exemption in Lewis County, ID

AGENCY: Interstate Commerce Commission

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903 *et seq.* the abandonment by the Nezperce Railroad Company of its entire railroad line consisting of 15.1 miles of track in Lewis County, ID.

DATES: This exemption will be effective on December 8, 1983. Petitions for reconsideration must be filed by November 28, 1983. Petitions for stay must be filed by November 18, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30296 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Gary L. Montgomery, 737 North 7th Street, Boise, ID 83702

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 31, 1983.

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

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-30143 Filed 11-7-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-75)]

Rail Carriers; Seaboard System Railroad, Inc.; Abandonment in Lincoln County, Tennessee and Madison County, Alabama; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its line of railroad located in

Lincoln County, TN, and Madison County, AL, between Elora, TN, and Hobbs Island, AL, a distance of 41.60 miles. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and on the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in boldface on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,
Secretary

[FR Doc. 83-30144 Filed 11-7-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 82-29]

Judith E. Kline, D.O.; Revocation of Registration

On October 29, 1982, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Judith E. Kline, D.O. (Respondent), of St. Petersburg, Florida, an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration, AK0154396. By letter dated November 9, 1982, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause.

Following the exchange and filing of prehearing statements, a prehearing conference was conducted by telephone and a Prehearing Ruling was issued on January 4, 1983. The hearing was held in Tampa, Florida, on February 15, 1983. Administrative Law Judge Francis L. Young presided. On July 6, 1983, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. In compliance with 21 CFR 1316.65(b), as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government's counsel. On July 26, 1983, the Respondent filed exceptions to Judge

Young's opinion and hearing decision. On August 8, 1983, Judge Young transmitted the record of these proceedings along with the Respondent's exceptions to the Acting Administrator. The Administrator has considered this record in its entirety, including Respondent's exceptions, and, pursuant to 21 CFR 1317.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

During a routine investigation of St. Petersburg area pharmacies in August or September 1980, Detective George B. Chapman, Jr., of the St. Petersburg Police Department noticed what seemed to be an excessive number of prescriptions for controlled substances, particularly narcotics, prescribed by Respondent. Several of the recipients of those drugs were known to Detective Chapman or other members of the Vice and Narcotics Section as drug abusers. Upon learning that Detective Logan of the Pinellas County Sheriff's Office had similar information regarding Respondent's practice, the detectives decided to investigate the Respondent jointly.

The detectives concentrated on prescriptions issued by Respondent between June 1 and December 31, 1980. They seized more than 900 prescriptions, all for Schedule II substances. Subsequently, the detectives targeted ten or twelve patients who appeared to be the recipients of the majority of the prescriptions. After compiling a chronological list for these patients showing the dates, types of drugs and the amount and the strength prescribed, the detectives showed this information to two osteopathic physicians. Both agreed that it appeared that these prescriptions were not issued in good faith but stated that in order to reach a more definite conclusion, they would have to examine the medical records of the patients. A pharmacologist at the University of South Florida Medical Center was also shown the lists and he too arrived at the same conclusion—that the prescriptions appeared to be excessive and not issued in good faith.

Based upon all of the information the detectives had gathered, they were able to obtain a search warrant for medical records in Respondent's office. The warrant was executed on April 24, 1981. These records were then shown to the two doctors previously convicted and to a third osteopathic physician. Each physician stated that the prescriptions were excessive and not issued in good faith.

This investigation by Detectives Chapman and Logan led to the issuance of an information by the State Attorney

for the Sixth Judicial Circuit of Florida. The information contained 16 counts, each alleging that Respondent unlawfully delivered a specified controlled substance to a particular patient during a certain time span by means of written orders which were not issued in good faith in the course of Respondent's professional practice as a duly licensed osteopathic physician in the State of Florida. Respondent pled guilty to each of the 16 counts of the information. She was adjudged guilty of six of the sixteen counts while adjudication was withheld on the remaining counts. In all, the six patients whose prescriptions are listed in the chronological listing received 214 prescriptions for Schedule II controlled substances during the seven and one-half month period from May 2 to December 16, 1980.

During Detectives Chapman and Logan's investigation, they enlisted the assistance of Detective Sergeant James Ramey of the St. Petersburg Police Department's Vice and Narcotics Section. Ramey, in an undercover capacity, went to Respondent's office on November 4, 1980. He was given a medical questionnaire to complete. He answered all of the questions except those relating to his health. Ramey was brought into Respondent's office at which time Ramey told Respondent he was referred to her by one Lyle Knight and then requested some Dilaudid. Respondent stated that she was not writing prescriptions for Dilaudid but could give Ramey a prescription for Percodan. Ramey informed Respondent that he had medical problems. After a discussion of an appropriate fictitious problem, Respondent entered "headaches and backaches" on Ramey's chart. During the visit on November 4, 1980, Ramey received from Respondent a prescription for 30 Percodan tablets.

Ramey returned to Respondent's office on November 13, 1980. Respondent told Ramey that it was too soon for him to be coming back and that with the new administration, things were going to get tough on doctors like her. Respondent also asked Ramey if he was a "cop." Ramey assured her that he was not a police officer.

On December 1, 1980, Ramey returned to Respondent's office. There was no discussion regarding Ramey's health, but Respondent did mention that she had to be careful about undercover police officers or "informers." Ramey received from Respondent a second prescription for 30 Percodan tablets.

On January 9, 1981, Ramey arrived 12 minutes late for his appointment and was informed that he was too late to keep the appointment. The receptionist

of the office told Ramey that Respondent was told that she was under investigation so she would not be writing any more Schedule II prescriptions.

On January 12, 1981, Ramey arrived for his final appointment at which time Respondent informed him that she no longer was writing Schedule II prescriptions. She would give no reason for this change in her practice.

On July 9, 1981, the State Attorney for the Sixth Judicial Circuit of Florida issued a two-count information charging Respondent with unlawfully delivering controlled substances by means of written orders not issued in good faith in the course of Respondent's professional practice as a licensed osteopath. The two counts specifically referred to the prescriptions for Percodan received by Detective Ramey on November 4, 1980, and December 1, 1980. Respondent pled guilty to both counts and was thereupon adjudicated guilty. Respondent was sentenced to five years imprisonment, however after serving one day, the remainder of the sentence was suspended and Respondent was placed on probation for five years.

Shortly thereafter at a hearing before the Board of Osteopathic Medical Examiners of the State of Florida, the Respondent filed a set of stipulated facts. Respondent stipulated that she did not prescribe the controlled substances for a medically justifiable purpose, that such prescriptions were in excessive or inappropriate quantities, that Respondent prescribed those controlled substances other than in the course of her professional practice, and that she made deceptive, untrue or fraudulent representations in the practice of osteopathic medicine. The board decided nonetheless not to revoke Respondent's license to practice medicine in the State of Florida.

Based on Respondent's felony convictions, Judge Young concluded that there is a statutory basis for the revocation of Respondent's DEA Certificate of Registration under 21 U.S.C. section 824(a)(2). Judge Young then discussed his reasons for recommending that the Administrator revoke the registration.

At the hearing in this matter, Respondent attempted to excuse her actions by claiming that she was naive, that she was fooled and misled by addicts, and that there were complaints of pain. Judge Young notes that no credence can be placed in such testimony. Respondent pled guilty to

criminal charges based on those instances. She also stipulated in the State Board proceedings that she had not acted in a professional manner.

Respondent at the hearing indicated that she had improved her office procedures since December, 1980, in an attempt to screen out drug addicts. As the Administrative Law Judge states in his opinion, these procedures should have been in effect all along. Instead, Respondent implemented them after her arrest.

Judge Young notes that the effect of revocation on Respondent's ability to continue to practice her profession is a relevant factor for consideration. However, the overriding concern of the Administrator of DEA must be to protect the public from the diversion of legitimate drugs for illegitimate purposes.

The Respondent has shown her disregard for the law and for the public health through her conversations with undercover officer Ramey. Respondent knew she was breaking the law but nonetheless continued to take the risk of being discovered. Based on her past record, Respondent has not given sufficient assurances that her criminal activities would not continue. The Administrative Law Judge has recommended that Respondent's registration be revoked. After reviewing the Administrative Law Judge's recommended ruling, findings of fact, conclusions of law and decision and the Respondent's exceptions to these, the Administrator adopts the Administrative Law Judge's opinion in its entirety.

Having concluded that there is a statutory basis for the revocation of Respondent's Certificate of Registration and having further concluded that under the facts presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AK0154396 previously issued to Judith E. Kline, D.O., be, and it hereby is, revoked.

Dated: November 1, 1983.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 83-30197 Filed 11-7-83; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; U.S. Steel Corp., et al.

In accordance with Section 233 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 24, 1983–October 28, 1983.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 22 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-14,784; U.S. Steel Corp., Texas Works, Baytown, TX

TA-W-14,622; B.J. Hughes Services Equipment Co., Long Beach, CA

TA-W-14,388; Reed Rock Bit Co., Houston, TX

TA-W-14,609; Metallurgical, Inc., Cleveland, OH

TA-W-14,616; Superior Drawn Steel Co., Monaca PA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-14,649; Foote Mineral Co., New Johnsonville, TN

Aggregate U.S. imports of manganese metal did not increase as required for certification.

Affirmative Determinations

TA-W-14,539; *W.R. Weaver Co., El Paso, TX*

A certification was issued covering all workers separated on or after February 25, 1983.

TA-W-14,382; *Ellwood Knitting Mills, Ellwood City, PA*

A certification was issued covering all workers separated on or after February 1, 1982 and before January 31, 1983.

TA-W-14,633; *Phoenix Footwear, Inc., Secaucus, NJ*

A certification was issued covering all workers separated on or after April 1, 1982.

TA-W-14,550; *Pinto Valley Copper Corp., Miami, AZ*

A certification was issued covering all workers separated on or after June 1, 1982.

TA-W-14,581; *Montgomery Sportswear Corp., Montgomery, NY*

A certification was issued covering all workers separated on or after April 6, 1982 and before January 17, 1983.

TA-W-14,639; *Jones & Laughlin Steel Corp., Memphis District Sales Office Memphis, TN*

A certification was issued covering all workers separated on or after May 2, 1982.

I hereby certify that the aforementioned determinations were issued during the period October 24, 1983–October 28, 1983. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 1, 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-30193 Filed 11-7-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,579]

**Clark Equipment Co., Jackson, Mich.;
Notice To Reopen Investigation**

By letter dated October 24, 1983, a company official called attention to the Department of Labor's recent certification of workers of Clark Equipment Company in Battle Creek, Michigan and asked the Department to reconsider its action denying trade adjustment assistance for workers at Clark Equipment Company, Jackson, Michigan. The request was based on the integration of transmissions produced at the Jackson plant in industrial trucks manufactured at the Battle Creek plant. The Department denied trade

adjustment assistance to workers at the Jackson plant on January 17, 1983 and sustained its decision on reconsideration on April 8, 1983. The decision documents were published in the *Federal Register* on January 28, 1983 (48 FR 4061) and on April 19, 1983 (48 FR 16778).

On October 14, 1983 the Department certified all workers of the Battle Creek, Michigan plant of the Industrial Truck Division of Clark Equipment Company who became totally or partially separated from employment on or after March 14, 1982. Because the Battle Creek plant used a significant portion of the Jackson, Michigan plant's production of transmissions in manufacturing industrial trucks, there is sufficient justification for the Department to reconsider its earlier actions on petition TA-W-13,579.

Accordingly, the Department's actions on petition TA-W-13,579, Clark Equipment Company, Jackson, Michigan is being reopened to ascertain whether the certification of workers of Clark Equipment's Industrial Truck Division in Battle Creek would result in a different outcome.

Signed at Washington, D.C., this 1st day of November 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 83-30193 Filed 11-7-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-14,011]

**Franklin Apparel Manufacturing Co.,
Decherd, Tennessee; Negative
Determination Regarding Application
for Reconsideration**

By an application dated October 12, 1983, the Amalgamated Clothing and Textile Workers Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at the Franklin Apparel Manufacturing Company, Decherd, Tennessee. The determination was published in the *Federal Register* on September 27, 1983 (48 FR 44129).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based upon a domestic transfer of production of men's slacks from the Decherd, Tennessee plant to the Talladega, Alabama plant. The Decherd, Tennessee plant closed in August 1982. The Department's denial notice cited increased production of men's slacks at Talladega and increased sales of tailored men's wear (men's suits and slacks) at Palm Beach, Inc., the parent company in 1982 compared to 1981.

The union claims that Palm Beach suit production was 14 percent lower in 1982 than in 1981 and hence its pants production was lower also. The union also claims that the increase of Palm Beach's sales in 1982 may include company imports. Lastly, the union takes issue with the Department's findings that the Talladega plant has increased pants production in 1982.

Findings in the investigative case file show that Palm Beach does not import men's suits or suit pants. Palm Beach sales of men's tailored clothing including pants increased in 1982 compared to 1981 and in the first 6 months of 1983 compared to the same period in 1982. The investigative case file shows further that the decline in production and the closing of the Decherd plant was the result of a change in fashion which began to occur in the late 1970's from suits with two pair of pants to blazers with no pants. This change in fashion caused excess pants production capacity at Palm Beach and resulted in the closing of the Decherd, Tennessee plant in August 1982 with the remaining pants production operations transferred to the Talladega plant. With respect to the union's assertion that production at Talladega has steadily decreased, findings in the investigative file show that this was not the case during the time of the shutdown of the Decherd, Tennessee plant. Production of men's slacks at Talladega increased, in quantity, in 1982 compared to 1981 and in every quarter of 1982 compared to the same quarter of 1981.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 31st day of October 1983.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

(FR Doc. 83-30192 Filed 11-7-83; 8:45 am)

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Certifications Under the Federal Unemployment Tax Act for 1983

On October 31, 1983, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and the certifications are printed below.

Dated: November 2, 1983.

Royal S. Dellinger,

Acting Assistant Secretary of Labor.

October 31, 1983.

HON. DONALD T. REGAN,

Secretary of the Treasury, Washington, D.C.

Dear Don: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending October 31, 1983. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1954, and the other is required with respect to additional tax credit by Section 3303 of the Code.

Puerto Rico and the Virgin Islands are included in the Section 3304 certification but not the Section 3303 certification. Certification for additional tax credit is not necessary because the unemployment compensation laws of those two jurisdictions did not permit reduced rates of contributions to employers in 1983. The certifications are for the maximum credits allowable under Section 3302 of the Code.

Please note that the States of Connecticut, Kentucky, Massachusetts, Michigan, Ohio, and Oklahoma and their unemployment compensation laws are not included in the two certifications because of my findings that the laws of those States do not contain each of the provisions required for State unemployment compensation laws by Section 3304(a) of the Internal Revenue Code of 1954. I am, therefore, constrained to omit those States and their laws from the present certifications, although I am precluded from withholding those certifications at the present time by Section 3310(d) of the Code. Omitting those States from the certifications, therefore, does not constitute a present withholding of the certifications with respect to those States.

I will notify you further when a final decision is made regarding the 1983

certifications with respect to those States. In the meantime, no action should be taken which will preclude giving effect to the certifications or withholding the certifications until a final decision is made.

Sincerely,

Raymond J. Donovan.

United States Department of Labor

Office of the Secretary

Washington, D.C.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1954

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending October 31, 1983, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Louisiana
Maine
Maryland
Minnesota
Mississippi
Missouri
Montana
Nebraska

Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

The certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, D.C. this 31st day of October, 1983

Raymond J. Donovan,

Secretary of Labor.

United States Department of Labor

Office of the Secretary

Washington, D.C.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1954.

In accordance with the provisions of Paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of

the following named States, which heretofore have been certified pursuant to Paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending October 31, 1983.

Alabama	Nevada
Alaska	New Hampshire
Arizona	New Jersey
Arkansas	New Mexico
California	New York
Colorado	North Carolina
Delaware	North Dakota
District of Columbia	Oregon
Florida	Pennsylvania
Georgia	Puerto Rico
Hawaii	Rhode Island
Idaho	South Carolina
Illinois	South Dakota
Indiana	Tennessee
Iowa	Texas
Kansas	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Virgin Islands
Minnesota	Washington
Mississippi	West Virginia
Missouri	Wisconsin
Montana	Wyoming
Nebraska	

The certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, D.C. this 31st day of October, 1983

Raymond J. Donovan,

Secretary of Labor.

(FR Doc. 83-30194 Filed 11-7-83; 8:45 am)

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than November 18, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than November 18, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of

Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 31st day of October 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aston Precision Products, Inc., Jet Dept. (ACTWU)	Aston, PA	10/28/83	10/19/83	TA-W-15,082	Spinnerettes.
Dyeing & Finishing Unlimited (ILGWU)	Hoboken, NJ	10/14/83	10/11/83	TA-W-15,083	Undergarments.
Ford Motor Company (workers)	Pico Rivera, CA	10/3/83	9/20/83	TA-W-15,084	Emission testing Ford car.
Milano Knitting (ILGWU)	Hoboken, NJ	10/14/83	10/11/83	TA-W-15,085	Undergarments.
Phelps Dodge Brass Co., Los Angeles Tube Mill (IBEW)	Los Angeles, CA	10/28/83	10/24/83	TA-W-15,086	Copper & brass tubing.
Royal Mannequin (workers)	Miami, FL	10/24/83	10/12/83	TA-W-15,087	Mannequins.
Hartford Corporation, Oxford Div. (company)	New Brunswick, NJ	10/21/83	10/18/83	TA-W-15,088	Plastic table cloths.
Celanese Fibers Co. Amcelle Plant (ACTWU)	Cumberland, MD	10/28/83	10/19/83	TA-W-15,089	Acetate & tracetate filament yarns.
Stromberg-Carlson Corp. (workers)	Lake Mary, FL	10/24/83	10/13/83	TA-W-15,090	Telecommunication digital switch equipment.
Fox Shoe Manufacturing Corp. (ACTWU)	New York, NY	10/28/83	10/26/83	TA-W-15,091	Ladies' shoes.
Curtis Wright Corp. (UAW)	Woodridge, NJ	10/31/83	10/6/83	TA-W-15,092	Aircraft engines.
Evans Coal Co. (workers)	Poteau, OK	10/12/83	10/3/83	TA-W-15,093	Mine metallurgical coal.
Utah International, Inc., Springer Mining Co. (CO)	Winnemucca, NV	10/31/83	10/27/83	TA-W-15,094	Tungsten—(APT).

[FR Doc. 83-30191 Filed 11-7-83; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

IBM Retirement Plan and IBM Part-Time Employees Retirement Plan, et al., Grant of Individual Exemptions

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notice set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public

comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

IBM Retirement Plan and IBM Part-Time Employees Retirement Plan (the Plans) Located in Armonk, New York

[Exemption Application Nos. D-4065 and D-4061; Prohibited Transaction Exemption 83-182]

Exemption

(a) *General Exemption*—the restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions

resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, or sale of real property (including the acquisition, ownership, or sale of any joint venture or partnership interest in such property) and the borrowing or lending of money in connection therewith, between a party in interest with respect to the Plans and a single customer real estate separate account (the Account) maintained and managed by the Equitable Life Assurance Society of the United States (Equitable), provided that the following conditions are met:

(1) Such party in interest is not—

(i) Equitable, any person directly or indirectly controlling, controlled by, or under common control with Equitable, any officer, director, or employee of Equitable, or any partnership in which Equitable (on behalf of its general account) is a partner;

(ii) International Business Machines Corporation (IBM) or any affiliate of IBM (within the meaning of section 407(d)(7) of the Act); or

(iii) A person who exercises discretionary authority, responsibility, or control, or who provides investment advice, with respect to the investment of Plan assets in the Account or with respect to the management or disposition of the Plan assets held in the Account;

(2) At the time the transaction is entered into, and at the time of any

subsequent renewal thereof that requires the consent of Equitable, the terms of the transaction are not less favorable to the Account than the terms generally available in arm's-length transactions between unrelated parties;

(3) Equitable maintains for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in paragraph (4) of this section to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Equitable, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (4) below; and

(4)(i) Except as provided in subparagraph (ii) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (3) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan in the Account or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Plan or any duly authorized employee or representative of that employer,

(D) Any participant or beneficiary of any Plan or any duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described in subparagraphs (i)(B) through (i)(D) of this paragraph shall be authorized to examine Equitable's trade secrets or commercial or financial information which is privileged or confidential; and

(b) *Specific Exemptions*—the restrictions of section 406(a)(1) (A) through (D) and 406(B) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to:

(1) *Furnishing of Goods and Services.* The furnishing of goods and services with respect to the real property investments of the Account described in

section (a) above by IBM or any affiliate thereof (within the meaning of section 407(d)(7) of the Act), provided that—

(i) The transaction satisfies the requirements of subparagraphs (a) (2), (3), and (4) of this exemption, and

(ii) The total amount involved in the furnishing of such goods and services in any calendar year does not exceed the greater of \$25,000 or 0.5 percent of the fair market value of the assets acquired for the Account on the most recent valuation date of the Account prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities, and any goods incidental to such services and facilities by a place of public accommodation acquired for the Account, to a party in interest with respect to the Plans if the services, facilities or incidental goods are furnished on a comparable basis to the general public and if the requirements of subparagraphs (a) (3) and (4) of this exemption are met.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1983 at 48 FR 41662.

Effective Date: This exemption will be effective from May 5, 1982, to a date 90 days after the effective date of the grant of a class exemption for employee benefit plan asset transactions subject to the discretion of independent qualified professional asset managers (QPAMs), a proposal for which was published on December 21, 1982 at 47 FR 56945.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of November 1983.

Morton Klevan,

Deputy Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 83-30219 Filed 11-7-83; 8:45 am]

BILLING CODE 4501-29-M

MERIT SYSTEMS PROTECTION BOARD

Practice and Procedure

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Opportunity to File Amicus Briefs in *Haataja* and *Mazzola* cases.

SUMMARY: The Board, on its own motion, has reopened the case of *Bruce Haataja v. Department of Labor*, and has on petition for review the case of *Denise v. Mazzola v. Department*. Both cases involve challenges to performance ratings affecting a subsequent reduction-in-force (RIF). The Board invites amicus briefs on the question of whether, or to what extent, it should review agency performance ratings in connection with RIF cases.

DATE: The original and one copy of each amicus brief must be received on or before December 8, 1983.

ADDRESS: Send briefs to: Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Barbara J. Benjamin (202) 653-7980. For copies of the Initial Decision in the referenced cases, contact Michael Hoxie, Director, Legal Publications

Division, Merit Systems Protection Board, 5205 Leesburg Pike, Suit 1404, Falls Church, Virginia 22041, (703) 756-6388.

SUPPLEMENTARY INFORMATION: Federal Agencies are required to maintain retention registers showing the relative standing of competing employees for RIF purposes. 5 CFR 351.505. In *Losure v. Interstate Commerce Commission*, 2 MSPB 261 (1980), the Board held that agencies have the burden of showing, by a preponderance of the evidence, that they have properly complied with RIF regulations.

One of the factors affecting an employee's standing on the retention register is the rating given in the last official performance appraisal. 5 CFR 351.504. In reviewing RIF cases, while the Board looks into whether agencies have followed prescribed procedures, it has not examined the circumstances behind the ratings given.

Recent changes in the Office of Personnel Management's RIF regulations give greater recognition to performance as a retention factor. The above referenced cases involve challenges to the merits and timing of performance ratings charging that unjustified or prematurely timed ratings are given in order to retain preferred employees.

Mr. Haataja alleges that two employees with less seniority than he were awarded outstanding ratings in an unscheduled rating period occurring directly after the issuance of a general RIF notice. Appellant argues that were it not for these ratings, covering only three and four month periods, he would not have been separated when the specific notices were issued. The initial decision upheld the agency action ruling that this Board has no authority to review "the proper exercise of agency discretion".

The Board has reopened the case pursuant to 5 U.S.C. 7701(e)(1)(B), for the purpose of determining whether it has the authority to review the timing and bona fides of performance ratings in RIF cases.

In the *Mazzola* case, the agency refused to consider appellant's "outstanding" rating because the appraisal was not officially due for another seven months. Consequently, appellant was "bumped" from her position and demoted through a reduction-in-force. The initial decision affirmed the agency action.

The Board has granted appellant's petition for review to consider whether the presiding official erroneously interpreted the provisions of 5 CFR 351.504(a) regarding an employee's

entitlement to additional service credit based on the "performance rating of record" on the date the specific RIF notice is issued.

The Board invites briefs on the issues raised in these appeals. Please refer to the case names and this **Federal Register** notice in your submissions.

Dated: November 2, 1983.

For the Board:

Herbert E. Ellingwood,

Chairman.

[FR Doc. 83-30103 Filed 11-7-83; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-91]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Space Power and Electric Propulsion.

DATE AND TIME: December 6-8, 1983, 8:30 a.m. to 5:00 p.m. each day.

ADDRESS: Lewis Research Center, National Aeronautics and Space Administration, Building 3, Room 215 Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome P. Mullin, National Aeronautics and Space Administration, Code RSE, Washington, DC 20546 (202/755-3127).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Space Power and Electric Propulsion was established to provide guidance and direction to the Space Energy Systems research and technology programs of NASA's Office of Aeronautics and Space Technology. The Subcommittee, chaired by Mr. Jerome H. Molitor, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including the Subcommittee members and participants).

Type of meeting: Open.

Agenda

December 6, 1983

8:30 a.m.—Welcome and Introductory Remarks.

9:00 a.m.—Space Energy Systems Program Status.

9:30 a.m.—Discussion of FY 86 New Initiative Process.

10:00 a.m.—Photovoltaic Energy Conversion Program Review.

1:00 p.m.—Electrochemistry Energy Conversion and Storage Program Review.

3:00 p.m.—Thermal-to-Electric Energy Conversion Program Review.

5:00 p.m.—Adjourn.

December 7, 1983

8:30 a.m.—Thermal Management Program Review.

10:00 a.m.—Power Systems Management and Distribution Program Review.

1:00 p.m.—Electric Propulsion Program Review.

3:00 p.m.—Tour of the Lewis Research Center's Energy Systems Facilities.

5:00 p.m.—Adjourn.

December 8, 1983

8:30 a.m.—Subcommittee Review Session.

1:00 p.m.—Subcommittee Remarks.

5:00 p.m.—Adjourn.

Dated: November 1, 1983.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-30112 Filed 11-7-83; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: November 30-December 1, 1983.

Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications submitted for Central Disciplines/Improving Introductory Courses and Excellence in a field Programs, Division of Education, for projects beginning after April 1, 1984.

Date: December 2, 1983.

Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications submitted for Central Disciplines-Fostering Coherence Throughout

an Institution Program, Division of Education, for projects beginning after April 1, 1984

Date: December 2, 1983.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415

Program: This meeting will review applications submitted to Research Materials Translations Program: Indic Panel, Division of Research Programs, for projects beginning after April 1, 1984

Date: December 5, 1983.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315

Program: This meeting will review applications submitted to Research Materials Translations Program: Classics Panel, Division of Research Programs, for projects beginning after April 1, 1984

Date: December 12, 1983.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430

Program: This meeting will review applications submitted to Research Materials Translations Program: Slavic Panel, Division of Research Programs, for projects beginning after April 1, 1984

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

(FR Doc. 83-30163 Filed 11-7-83; 8:45 am)

BILLING CODE 7536-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 13610; 812-5635)

Bank of America Canada; Application for an Order Exempting Applicant

November 1, 1983.

Notice is hereby given that Bank of America Canada ("Applicant") c/o Bank of America National Trust and Savings Association, 555 California Street, San Francisco, California 94104, filed an application on August 22, 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 made therein, which are summarized below, and are referred to the Act and rules thereunder for further information as to the provisions to which the exemption applies.

A Canadian chartered bank. Applicant is a wholly-owned subsidiary of Bank of America National Trust and Savings Association ("BOFA"), a national banking association organized under the national banking laws. BOFA is a wholly-owned subsidiary of BankAmerica Corporation, a bank holding company registered under the Bank Holding Company Act. Applicant provides a wide range of commercial banking services to corporate and multinational customers, as well as local governments and individuals throughout Canada.

As a Canadian bank chartered under the Bank Act of Canada ("Bank Act"), Applicant must compile and publish annual consolidated statements of assets and liabilities, income, appropriations for contingencies, and changes in shareholders' equity. The Bank Act sets out the corporate powers that Applicant may exercise, prohibiting Applicant from managing or participating in the management of a mutual fund in Canada, and limiting Applicant's securities underwriting and transactions in equity securities. Although the Bank Act does not establish any specific lending limits, it does mandate certain reserve requirements. Certain foreign currency deposit instruments, such as short-term commercial paper, sold to and held by a non-resident of Canada, are not required to be included in a determination of the amount of reserves that Applicant must maintain. Applicant must compile, publish, and send to the Canadian Inspector General of Banks ("Inspector") quarterly income statements. The

Inspector must examine Applicant at least once a year, and may examine Applicant as often as deemed necessary or expedient. If necessary, the Inspector may take charge of Applicant's premises to satisfy himself that the Bank Act, especially those provisions relating to the safety of the interests of Applicant's depositors, creditors, and shareholders, is being observed and that Applicant is in sound financial condition. Applicant must file periodic returns with the Canadian Minister of Finance ("Minister") and the Bank of Canada. The Minister ensures that Applicant maintains adequate and appropriate forms of liquidity.

Applicant proposes to issue and sell negotiable certificates of deposit ("NCDs") in the United States, in bearer and registered form, denominated in United States dollars. Applicant will offer NCDs in denominations of \$100,000 or more, and expects them to have maturities at the date of issuance of not more than seven years. Applicant will offer and sell the NCDs in the United States, directly or through one or more certificate of deposit dealers, to institutional and other sophisticated investors who usually purchase similar instruments. BOFA will unconditionally guarantee payment of the NCDs. The NCDs will rank *pari passu* among themselves and equally with all of Applicant's other unsubordinated, unsecured indebtedness, except for liabilities to the Government of Canada or any province thereof.

Applicant will offer and sell its NCDs without registering them under the Securities Act of 1933 ("1933 Act") in reliance on an opinion of United States counsel that the NCDs are exempt from the registration requirements of the 1933 Act pursuant to Section 3(a)(2) thereof as securities "issued or guaranteed by any bank." Applicant will not proceed with its proposal without receiving such an opinion, and it will not request the Commission to review or approve such opinion. Applicant will ensure that each offeree will receive, prior to purchasing its NCDs, a memorandum briefly describing the business of Applicant and BOFA that includes Applicant's most recent, publicly available, annual financial statements audited in accordance with Canadian accounting principles and its most recent, publicly available, unaudited, interim financial statements. Such memorandum will describe any material differences between accounting principles applied in the preparation of such audited financial statements and "generally accepted accounting principles" applicable to United States banks. Such

memorandum will be at least as comprehensive as those customarily used in offering certificates of deposit in the United States, and Applicant will update it promptly to reflect material changes in its financial condition. Applicant understands that an inadvertent failure by either a dealer or itself to provide an offeree with the type of memorandum described in this paragraph would not be viewed as a violation of its agreement to furnish the memorandum.

Applicant will appoint an agent for service of process in New York City, New York, for any actions arising out of the sale of NCDs that are instituted in any state or federal court located in that city by any holder of any NCDs. Applicant will consent to the jurisdiction of any state or federal court located in New York City in respect of any action emanating from the sale of NCDs, except to the extent it contests the manner of service on its agent or the scope of its agent's authority to accept process under such authorization. Applicant will submit to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the NCDs or otherwise. Applicant's appointment of an authorized agent to accept service of process and its consent to the jurisdiction of any state or federal court located in New York City in respect of any action emanating from the sale of its NCDs will be irrevocable until all amounts due and to become due in respect of the NCDs have been paid.

From time to time, Applicant may offer other debt securities for sale in the United States. Any such securities Applicant issues may be unconditionally guaranteed by BOFA and will be subordinated in the same manner as its NCDs. Any future offering Applicant makes will be made pursuant to a registration statement under the 1933 Act, an applicable exemption from registration under the 1933 Act in reliance on an opinion of United States counsel, or a no-action letter from the Commission's staff stating that the staff will not recommend enforcement action to the Commission in the circumstances of the proposed offering. Any offering of debt securities will be made on the basis of disclosure documents at least as comprehensive in their description of the business of Applicant and BOFA (if BOFA guarantees such securities) and containing the same disclosure memorandum previously described, but in no event will future disclosure documents be less comprehensive than those customary and appropriate for a registered or exempt offering of similar

debt securities in the United States. Applicant will update promptly any future disclosure documents to reflect material changes in its financial condition, and will ensure that each offeree will receive prior to purchase a copy of its relevant disclosure documents. Applicant will consent to jurisdiction and appoint an agent for service of process in the same manner as in the sale of its NCDs. If Applicant makes a future offering of commercial paper, it will apply for and receive one of the three highest investment grade ratings for commercial paper from one of the nationally recognized rating agencies prior to issuance of such paper, and Applicant's United States counsel shall certify that it received such a rating.

In support of its requested relief, Applicant states that compliance with the Act would effectively preclude it from publicly selling securities in the United States, even though the level of protection afforded purchasers of its securities in the United States is comparable to the level of protection afforded purchasers of United States banks' Securities (Applicant is extensively regulated by the Canadian banking authorities; its parents, BOFA and BAC, are extensively regulated by United States banking authorities). Applicant asserts that an exemption from all provisions of the Act would further the national policy of opening the United States capital markets to foreign entities and encouraging the free flow of capital among nations. Applicant also contends that the abuses the Act was directed against are not present in Applicant's commercial banking business.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 28, 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, and 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. 83-30146 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23102; 70-6917]

The Connecticut Light and Power Co., and Western Massachusetts Electric Co.; Proposals for Continued Authorization To Incur Excess Unsecured Indebtedness of Less Than Ten Years, To Create a Second Class of Preferred Stock, and To Increase Authorized Preferred Stock; Order Authorizing Solicitations of Proxies

November 2, 1983.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, electric utility subsidiaries of Northeast Utilities, a registered holding company, have filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder.

CL&P and WMECO seek authorization under the Act with respect to: (i) The solicitation of proxies on behalf of the respective Boards of Directors of the companies for use at separate special meetings of the holders of the preferred stock of the companies on December 15, 1983, and (ii) the proposals to be considered and acted upon at such separate meetings, namely: (a) Proposals to continue the current authorizations for the companies to issue and assume, for five year periods, unsecured indebtedness having maturities of less than ten years in excess of the present 10% limitation as set forth in the Certificate of Incorporation of CL&P and in the by-laws of WMECO, but not to exceed 20%, and (b)(1) a proposal to amend CL&P's Certificate of Incorporation to authorize the creation of a second class of preferred stock to be designated Class A Preferred Stock, having a par value of \$25 per share, and to increase CL&P's authorized capital stock by 8 million shares of Class A Preferred Stock having an aggregate par value of \$200 million and (2) a proposal to amend WMECO's by-laws to authorize the creation of a second class of preferred stock to be designated Class A Preferred Stock having a par value of \$25 per share.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 29, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the addresses 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 filed or as it may be amended, may be permitted to become effective.

It appearing to the Commission that the declaration regarding the proposed solicitations of proxies should be permitted to become effective forthwith pursuant to Rules 62 and 65:

It is ordered, That the declaration regarding the proposed solicitations of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rules 62 and 65 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-38147 Filed 11-7-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 23103; 70-6909]

Empire Exploration, Inc.; Proposed Sale of Securities To Finance Gas Exploration Program; Request for Exception From Competitive Bidding

November 2, 1983.

Empire Exploration, Inc. ("Empire") 10 Lafayette Square, Buffalo, New York 14203, an oil and gas exploration subsidiary of National Fuel Gas Company ("National"), a registered holding company, has filed an application-declaration with this Commission under Sections 6(b), 9(a), 10, and 11 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) under the Act.

Empire proposes to form a limited partnership under the laws of the State of New York which, in turn, will become a partner with Empire in the formation of a new joint venture. The purpose of the joint venture is to develop leasehold

properties in southwestern New York State for the production of oil and gas. It is represented that the use of a limited partnership as a financing vehicle should result in the production of oil and gas supplies on a more cost effective basis than under certain other available financing options. It is anticipated that the majority of gas produced will be purchased by companies in the National Fuel Gas System ("System") although certain portions may be sold to third parties.

Capital of this program will be raised in part through a negotiated sale by private placement of limited partnership interests. Such sales will conform with provisions of the Securities Act of 1933 relating to private placements. Investments in the limited partnership may be made in minimum amounts of \$50,000. A minimum of \$6 million and a maximum of \$10 million will be raised in this manner. Empire may also purchase up to approximately \$500,000 in limited partnership interests to reach the minimum amount. A registered broker dealer will serve as agent for the sale. Limited partners will have no right or power to take part in the management or control of the limited partnership's business.

Empire will make capital contributions to the limited partnership based on a formula relating to the capital invested by limited partners and to syndication costs. Additional contributions will be made by Empire, together with the total capital of the limited partnership, to finance the joint venture. Empire's aggregate capital contributions are not expected to exceed approximately \$1 million. Empire and the limited partnership will share on a prorated basis in the net revenues of the joint venture. Empire and associated companies in the System may also receive compensation from the joint venture pursuant to drilling, operating, and gas purchase agreement executed with the joint venture as part of the gas exploration program.

Empire has requested an exception from the competitive bidding requirements of Rule 50 under the Act in connection with the sale of the limited partnership interests. It states that the competitive bidding procedure is, by its nature, not appropriate to the sale of such interests. Pending final Commission action on this request, Empire is hereby granted permission to conduct preliminary discussions with placement agents.

The application-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 28, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing and will receive a copy of any notice or order issued. After said date, the application-declaration, as then amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-30148 Filed 11-7-83; 8:45 am]
BILLING CODE 8010-01-M

[File No. 22-12781]

Hospital Corporation of America, Inc., Application and Opportunity for Hearing

November 2, 1983.

Notice is hereby given that Hospital Corporation of America (the "Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Commerce Union Bank under three existing indentures of the Company which are qualified under the Act and five existing indentures of various governmental issuing authorities which have not been qualified under the Act in reliance upon Section 304(a)(4) thereof is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Commerce Union Bank from acting as trustee under any of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under

clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant has outstanding as of October 11, 1983 approximately \$500,000,000 debentures (the "Debentures") issued under the following indentures under which Commerce Union Bank acts as trustee, each of which indentures was qualified under the Trust Indenture Act of 1939 in connection with the registration of the Debentures issued thereunder pursuant to the Securities Act of 1933:

(a) 16½% Debentures due 2007; principal amount \$100,000,000; indenture filed January 15, 1982 (file no. 2-75696);

(b) Zero Coupon Debentures due 1997-2002; principal amount \$300,000,000; indenture filed May 20, 1982 (file no. 2-77611); and

(c) 15½% Debentures due 2007; principal amount \$100,000,000; indenture filed May 20, 1982 (file no. 2-77612).

2. As of October 11, 1983, the Applicant or a wholly-owned subsidiary of the Applicant was obligated pursuant to various loan or other similar agreements (the "Loan Agreements") to make payments in order to meet the debt service and other payment requirements under various indentures, and the revenue bonds (the "Tax-exempt Revenue Bonds") issued thereunder, of various governmental issuing authorities with respect to Tax-exempt Revenue Bonds of such issuing authorities to finance hospital or other projects acquired or constructed for the benefit of the Applicant or a wholly-owned subsidiary thereof. The Tax-exempt Revenue Bonds were issued in reliance upon the exemption from registration afforded by Section 3(a)(2) of the Securities Act of 1933. The indentures relating to such Tax-exempt Revenue Bonds were not qualified under the Trust Indenture Act of 1939 in reliance upon the exemption afforded by Section 304(a)(4) of said Act. The Applicant has guaranteed the obligations of its subsidiaries with respect to the Loan Agreements. The Loan Agreements or, in the instances in which the Company guarantees the

obligations of its subsidiaries, the Guaranties are senior unsecured obligations of the Company. Information with respect to the Tax-exempt Revenue Bonds is set forth below.

1. The Edmond Industrial Development Authority Industrial Development Revenue Bonds, Series 1983 (Hospital Corporation of America Project), under Trust Indenture by and between the Edmond Industrial Development Authority and Commerce Union Bank, as Trustee, dated as of June 1, 1983. Principal amount \$1,000,000.

2. The City of Bountiful, Utah Industrial Development Revenue Bonds, Series 1983 (Hospital Corporation of America Project), under Trust Indenture by and between City of Bountiful, Utah and Commerce Union Bank, as Trustee, dated as of May 1, 1983. Principal amount \$2,000,000.

3. West Valley City, Utah Industrial Development Revenue Bonds, Series 1983 (Hospital Corporation of America Project), under Trust Indenture by and between West Valley City, Utah and Commerce Union Bank, as Trustee, dated as of June 1, 1983. Principal amount \$1,000,000.

4. City of Georgetown, Kentucky Industrial Development Revenue Bonds (Hospital Corporation of America Project) Series 1983, under Trust Indenture by and between City of Georgetown, Kentucky and Commerce Union Bank, as Trustee, dated as of August 1, 1983. Principal amount \$1,000,000.

3. Commerce Union Bank, One Commerce Place, Nashville, Tennessee 37219, acts as trustee with respect to the indentures described in Section 1, above, and with respect to the Tax-exempt Revenue Bonds to which the Loan Agreements relate described in Section 2, above.

4. On September 14, 1983, the Commission found that the Trusteeship of Commerce Union Bank under the indentures described in Sections 1 and 2, above, was not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Commerce Union Bank from acting as trustee under any of such indentures.

5. As of October 11, 1983, a wholly-owned subsidiary of the Company was obligated pursuant to a sale agreement (the "Sale Agreement") to make payment in order to meet the debt service and other payment requirements under an indenture dated as of October 1, 1983, between the City of Albuquerque, New Mexico and Commerce Union Bank, as trustee (the "Albuquerque Indenture") and under \$8,800,000 principal amount of The City of Albuquerque, New Mexico Industrial Development Bonds (Hospital Corporation of America Project), Series 1983 (the "Albuquerque Revenue Bonds") issued thereunder. The Albuquerque Revenue Bonds, which are tax-exempt revenue bonds, were issued

to finance a hospital constructed for the benefit of a wholly-owned subsidiary of the Company. The Albuquerque Revenue Bonds were issued in reliance upon the exemption from registration afforded by Section 3(a)(2) of the Securities Act of 1933. The Albuquerque Indenture was not qualified under the Trust Indenture Act of 1939 in reliance upon the exemption afforded by Section 304(a)(4) of said Act. The Company has guaranteed the obligations of its subsidiary with respect to the Sale Agreement pursuant to a Guaranty Agreement dated as of October 1, 1983 between the Company and Commerce Union Bank (the "Albuquerque Guaranty"). The Albuquerque Guaranty is a senior unsecured obligation of the Company.

6. Commerce Union Bank, One Commerce Place, Nashville, Tennessee 37219, acts as trustee with respect to the indentures described in Section 3, above, and with respect to the Albuquerque Indenture.

7. The Applicant's respective obligations under the Debentures (and the Indentures relating thereto), the Loan Agreements, the Guaranties, and the Albuquerque Guaranty are wholly unsecured. All of the indebtedness pertaining to the indentures under which Commerce Union Bank acts as trustee constitutes indebtedness of the Company that is not subordinated to any other indebtedness of the Company. The Debentures (and the indentures relating thereto), the Loan Agreements, the Guaranties, and the Albuquerque Guaranty rank equally one with the other.

8. Each of the indentures contains the provisions required by Section 310(b) of the Trust Indenture Act of 1939.

9. The Applicant is not in default under the Debentures, or with respect to its obligations relating to the Tax-exempt Revenue Bonds, or with respect to the Albuquerque Revenue Bonds.

10. For the foregoing reasons, the Applicant believes that Commerce Union Bank's serving as trustee under any one of the indentures listed in Paragraphs 1, 2, and 5 above, and continuing such trusteeship during such time as the indebtedness under each such indenture is outstanding in each instance, should in no way inhibit, discourage or otherwise influence Commerce Union Bank's actions as trustee under any one or more of such other indentures. Consequently, its trusteeship under all of such indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify

Commerce Union Bank acting as trustee under any of such indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than November 29, 1983 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary

[FR Doc. 83-30151 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20339; SR-BSE-83-8]

The Boston Stock Exchange, Inc. ("BSE"); Order Approving Proposed Rule Change

November 1, 1983.

On August 8, 1983, the Boston Stock Exchange, Inc. ("BSE") filed a proposed rule change under the Securities Exchange Act of 1934 ("the Act"),¹ concerning member processing of customer trades. The Commission solicited comment on the proposed rule change.² However, no comments were filed.

The proposed rule change requires certain member organizations to use a registered securities depository for the confirmation, acknowledgement and book-entry settlement of the depository-eligible transactions. Transactions that would be covered by the proposed rule change include: (1) A purchase by the customer where its agent is to receive the securities against payment ("COD"); and (2) a sale by the customer where its agent is to deliver the securities against payment ("POD").³ The proposed rule change would not apply to COD/POD transactions when both the customer and its agent do not participate in a registered securities depository.

The proposed rule change is similar to rules adopted by the other major securities exchanges and the National Association of Securities Dealers, Inc. ("NASD"). These rules, however, also exempt COD/POD transactions when the member organization and its agent do not participate in a registered securities depository. Since the BSE requires its members to participate in a registered securities depository, the BSE believes this exemption is unnecessary.

As indicated in the Commission's Order approving the similar proposed rule changes of various stock exchanges and the NASD,⁴ the Commission believes that the proposed rule change will reduce the frequency with which trades fail-to-settle because of delays in communicating settlement instructions. Use of depository facilities for electronic confirmation, acknowledgement, and book-entry settlement will provide for more efficient settlement of COD/POD transactions and will thus facilitate more cost-efficient securities industry operation, during both normal and high volume periods. The Commission further believes that the proposed rule change will reduce the costs and delays associated with the unnecessary physical movement of stock certificates.

For these reasons and the reasons set out in Securities Exchange Act Release No. 19227,⁵ the Commission finds that the proposed rule change is consistent with the requirements of the Act. In addition, the proposed rule change represents a further step toward fulfillment of the Commission's goal of promoting increased usage of clearing agencies for the clearance and settlement of securities transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary

[FR Doc. 83-30150 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20340; File No. SR-PSDTC-83-09]

Pacific Securities Depository Trust Co.; Filing of Proposed Rule Change

November 2, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), on September 8, 1983, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments from persons interested in the proposal.

The proposal would enable PSDTC to establish a link with Midwest Securities Trust Company's ("MSTC") Municipal Bond Processing Service ("MBPS").¹ This link would make available to PSDTC participants automated depository services relating to municipal bonds in bearer form.² Consistent with this link, the proposal also would amend PSDTC Rule 3, § 1 to expand the list of depository eligible securities issues to include municipal bearer bonds. Currently, bearer bonds are ineligible for PSDTC depository services.

Under the proposal, PSDTC would agree to become a MSTC MBPS participant by executing a written agreement. As an MBPS participant, PSDTC would have on-line access to MBPS. PSDTC participants choosing to use the link would need to sign a written agreement with PSDTC. This agreement between PSDTC and its participants would be similar to the MSTC/PSDTC agreement.³

¹ MBPS is a network of regional custodian and depository satellites offering deposit, safekeeping and withdrawal of, and other services related to, municipal bearer and registered bonds. See Securities Exchange Act Release No. 19888 [June 20, 1983], 48 FR 29083 [June 24, 1983], approving expansion of MBPS to municipal bearer bonds.

² To gain operational experience with the MBPS link, PSDTC currently is operating a limited pilot municipal bearer bond processing service.

³ PSDTC is examining the draft agreements filed as part of the proposed rule change. The Commission expects PSDTC, during this proceeding, to complete that re-examination and to file with the Commission appropriately amended agreements.

¹ See 15 U.S.C. 78s(b)(2) and 17 CFR 240.19b-4 (1982).

² See Securities Exchange Act Release No. 20199 [September 20, 1983], 48 FR 43751 [September 28, 1983].

³ See, e.g., New York Stock Exchange Rule 387, NYSE Manual (CCH) ¶2387 (1983).

⁴ See Securities Exchange Act Release No. 19227 [November 9, 1982], 47 FR 51568 (November 16, 1982).

⁵ *Id.*

Operationally, the proposal contemplates that PSDTC participants would deposit their municipal bearer bonds directly in a MSTC "depository satellite" ("DS"). The DS then would credit each PSDTC participant's account at MSTC. Each PSDTC participant account at MSTC would be coded to identify it as a PSDTC, rather than a MSTC, participant account. PSDTC participants would relay their bond transfer and withdrawal requests to PSDTC, and PSDTC would send this information to MSTC through its PSDTC/MSTC terminal. MSTC similarly would relay information to PSDTC and its participants through the terminal. For example, MSTC would track interest payable dates for issues deposited in MBPS by PSDTC participants. MSTC would inform PSDTC of those dates through the terminal, and PSDTC would print-out and distribute hard copy reports relaying that data to its MBPS participants. On interest payable date, MSTC would determine the aggregate interest amount payable to PSDTC participants, and would calculate the amount due each PSDTC participant. MSTC, through its custodian bank, would then wire the appropriate aggregate amount of interest funds to PSDTC, with instructions to PSDTC on how to distribute the funds to its participants. In accordance with those instructions, PSDTC would issue checks to each of its MBPS participants.

In its filing, PSDTC states that the proposal would reduce the physical delivery of municipal bearer bonds and therefore would improve the safeguarding of securities. Further, PSDTC believes, the proposal would enhance current interface arrangements between registered securities depositories. Thus, PSDTC believes that the proposed rule change is consistent with Section 17A of the Act.

Persons interested in the proposal can submit written comments on the proposal within 21 days after this notice is published in the *Federal Register*. Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Please refer in your comments to File No. SR-PSDTC-83-09.

Copies of the filing submission, any amendments, all written comments on the proposed rule change, and all related written correspondence between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, can be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW.,

Washington, D.C. Copies of the filing and of any amendments also can be inspected and copied at PSDTC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-30140 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

Public Availability of Certain Staff Manuals

AGENCY: Securities and Exchange Commission.

ACTION: Notice of public availability of certain staff manuals.

SUMMARY: The Commission is announcing the public availability of certain staff manuals prepared by the Division of Corporation Finance concerning the statutes, rules and regulations administered by the Division and particular situations encountered in connection therewith. These manuals have been prepared by the Division for staff training purposes and do not necessarily represent the views or policies of the Commission. The manuals are subject to updating and revision. The manuals in question (Proxy Rules Reference Book; Disclosure Practices Manual; 1933 Act Training Manual; Compilation of Telephone Interpretations; and certain portions of Enforcement Liaison Reference Book) will be available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., beginning Tuesday, November 8, 1983.

FOR FURTHER INFORMATION CONTACT:

Thomas M. Horton or June W. McCulloch at (202) 272-7450.

George A. Fitzsimmons,
Secretary.

November 3, 1983.

[FR Doc. 83-30182 Filed 11-7-83; 9:48 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 04/04-0226]

First Tampa Capital Corp., Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1983)) by First Tampa Capital Corporation, 4600 N. Dale Mabry Highway, Tampa, Florida 33614 for a license to operate as a small business

investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and shareholders are:

Name and address	Title and relationship	Initial percent of ownership
Trevor A. Rolfe, 4410 Hudson Lane, Tampa, FL 33609.	President and Director	5.9
Frank L. Morsani, 1048 Frankland Road, Tampa, FL 33609.	Chairman, Treasurer, and Director	11.8
Thomas L. duPont, 204 Palmetto Road, Belleair, FL 33516.	Secretary and Director	29.4
Alfred S. Austin, 4617 San Miguel, Tampa, FL 33609.	Director	5.9
Carl W. Lindell, Jr., 2525 Bayshore Blvd., Tampa, FL 33629.	Director	5.9
W.R.B. Enterprises, Inc., 1219 N. Highway 301, Tampa, FL 33619.		23.5
Stephens, Inc., 114 East Capitol Ave., Little Rock, Ark 72201.		17.6

W.R.B. Enterprises, Inc. has two shareholders, G. Robert Blanchard (64.7%) and Jack W. Winter (35.3%).

Stephens, Inc. has two shareholders, Jackson T. Stephens (50%) and Wilton R. Stephens (50%).

Securities are expected to be offered to business associates and friends of the foregoing persons and entities. The number of offerees are to be less than thirty-five.

The Applicant will begin operations with a capitalization of \$766,000 and will be a source of equity capital and long term loan funds for qualified small business concerns whose needs might not be met by traditional funding sources.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Tampa, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 3, 1983.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

(FR Doc. 83-30218 Filed 11-7-83; 8:45 am)

BILLING CODE 8025-01-M

[Pub. Notice 983]

Proposed UNEP Ozone-Layer Convention; Report of U.S. Delegation; Meeting

At this meeting Members of the U.S. Delegation to the Third Session (October 17-21, 1983) of the UNEP *Ad Hoc* Working Group of Legal and Technical Experts for Elaboration of a Global Framework Convention of the Ozone Layer will report to the public on the results of the Third Session.

Members of the public are urged to comment as time permits and may attend up to the seating capacity of the room.

The meeting is scheduled for two hours on Tuesday, November 22, 1983 starting at 10 a.m. The location of the meeting is Room 1406 in the Department of State, 21st and C Streets, NW., Washington, D.C. 20520.

The public should use the Diplomatic Entrance on "C" Street to enter the building.

For further information, please contact Mr. Tom Wilson, Deputy Director, State's Office of Environment and Health, telephone (202) 632-9312.

Dated: November 2, 1983.

Mary Rose Hughes,
Deputy Assistant Secretary, Environment, Health and Natural Resources.

(FR Doc. 83-30236 Filed 11-7-83; 8:45 am)

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on January 11, 1984, to answer questions from the public and industry regarding the Agency's rulemaking, research and enforcement programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m. if necessary. It will be held in the

Federal Aviation Administration's Auditorium, Building FOB-10A, 800 Independence Avenue, SW., Washington, D.C.

At the January 11 meeting, representatives of DOT will answer questions received from the industry and the public relating to NHTSA's rulemaking, research and enforcement programs (including defects). The purpose of this is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. (Questions regarding the Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions).

Questions for the January meeting should be submitted in writing by December 9 to Kennerly H. Digges, Acting Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, D.C. 20590. If sufficient time is available, questions received after the December 9 date may be answered at the meeting. The individual, group, or company submitting a question does not have to be present for the question to be answered.

A consolidated list of the questions submitted by December 9 and the issues to be discussed will be mailed to interested persons on or before January 6, 1984, and will be available at the meeting. This list will serve as the agenda.

A Transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within five weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA, Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

This meeting will be followed by the opening session of a previously announced Workshop for Modeling Human Kinematics and Vehicle Structural Responses.

Issued in Washington, D.C. on November 2, 1983.

Kennerly H. Digges,
Acting Associate Administrator for Rulemaking.

(FR Doc. 83-30106 Filed 11-7-83; 8:45 am)

BILLING CODE 4910-59-M

Research and Special Programs Administration

Technical Hazardous-Liquid Pipeline Safety Standards Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the Technical Hazardous-Liquid Pipeline Safety Standards Committee on December 7, 1983, at 9 a.m. in Room 3442, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to develop a report on the technical feasibility, reasonableness, and practicability of two proposed safety standards and discuss a regulatory project as follows:

Part I: Proposed Amendments to 49 CFR Part 195

1. Regulation of Intrastate Pipeline Facilities Used in the Transportation of Petroleum, Petroleum Products, or Anhydrous Ammonia.
2. New Criteria for Isolated Corrosion Pitting.

Part II: Regulatory Project

1. Qualification of Pipeline Welders. Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Betty Clark, Room 8101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202-426-1640, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: November 3, 1983.

Richard L. Beam,
Associate Director for Pipeline Safety Regulation, Material Transportation Bureau.

(FR Doc. 83-30205 Filed 11-7-83; 8:45 am)

BILLING CODE 4910-60-M

Technical Pipeline Safety Standards Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the

Technical Pipeline Safety Standards Committee on December 13, 1983, at 9 a.m. in Room 3442, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to discuss and develop a report on the technical feasibility, reasonableness, and practicability of the following proposed amendment to safety standards:

1. Design of Pipeline Components, General Requirements

The Committee will also discuss the following regulatory projects:

1. Monitoring external corrosion control

- 2. Requirements for reporting gas incidents**
- 3. Interior piping, adequacy of existing standards**
- 4. Qualification of pipeline welders.**

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Betty Clark, Room 8101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202-

426-1640, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements of the Committee before or after any session of the meeting.

Dated: November 3, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

FR Doc. 83-30294 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 217

Tuesday, November 8, 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

DEPARTMENT OF EDUCATION

AGENCY: National Council on Educational Research.

ACTION: The Search Committee, a subcommittee of the N.C.E.R., will hold a closed meeting on November 13 and 14, 1983.

MATTERS TO BE DISCUSSED: Discussion of Internal Personnel; specifically, the selection of an Executive Director (interviewing and discussion of qualifications/resumes).

DATED: November 13, 1983 and November 14, 1983.

ADDRESSES:

Nov. 13, 1983—Ramada Renaissance, 1143 New Hampshire Ave., NW., Washington, D.C.

Nov. 14, 1983—National Council on Educational Research office, 2000 L St., NW., Washington, D.C. 20036 (Suite 617B)

TIME: Nov. 13, 1983—7:00 p.m. to 11:00 p.m. and Nov. 14 from 8:00 a.m. to 7:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Renee Trent, N.C.E.R. Associate, N.C.E.R. 2000 L St., NW., Suite 617B, Washington, D.C. 20036, 202-254-7490.

SUPPLEMENTARY INFORMATION: The N.C.E.R. Search Committee meeting will be closed.

The agenda includes discussion of internal personnel matters; namely, selection of an Executive Director.

The meeting will be closed on Nov. 13 and 14, 1983 to review applications and to conduct interviews for the position of Executive Director of the Council. The meeting will be closed under the authority of

Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c) (2) and (6)). Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters which would constitute a serious invasion of privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Patricia Hines,

Authorizing Official, N.C.E.R. Associate.

[S-1568-83 Filed 11-4-83; 8:45 am]

BILLING CODE 4000-01-M

2

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 am, Monday, November 14, 1983.

PLACE: 20th Street and Constitution Avenue, N.W., 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: November 4, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1567-83 Filed 11-4-83; 8:45 am]

BILLING CODE 6210-01-M

3

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 9-83

Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations

(45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thurs., Nov. 17, 1983 at 10:30 a.m.:

Consideration of Proposed Decisions in the Second Czechoslovakian Claims Program and proposed Decisions in the Vietnam Prisoner of War Claims Program.

Thurs., Nov. 17, 1983 at 2 p.m.: Oral Hearing on Claim No. CZ-2-0244—Claim of Peter Visko.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All Meetings are held at the Foreign Claims Settlement Commission, 1111-20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111-20th Street, NW., Room 409 Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C., November 3, 1983

Judith H. Lock

Administrative Officer.

[S-1565-83 Filed 11-4-83; 2:54 pm]

BILLING CODE 4410-01-M

4

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:30 a.m., Tuesday November 15, 1983.

PLACE: Eight floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Herbert E. Ziegeldorf v. Action, MSPB Docket No. CH03308210346, Coral Rizzolo v. Action, MSPB Docket No. CH03308210179.

2. Mamoru Ishikawa v. Department of Labor, MSPB Docket No. DC03518210473.

3. Harold A. Albert v. Department of Transportation, MSPB Docket No. BN075281F0229.

4. Charles F. Behensky, Jr. v. Department of Transportation, MSPB Docket No. CH075281F0979.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Secretary, (202) 653-7200.

For the Board.

Dated: November 3, 1983, Washington, D.C.

Robert E. Taylor,
Secretary.

[S-1562-83 Filed 11-4-83; 9:16 am]

BILLING CODE 7400-01-M

5

NATIONAL CREDIT UNION ADMINISTRATION

CHANGE IN SUBJECT OF MEETING

The National Credit Union Administration Board has determined that its business requires that the previously announced open meeting on November 10, 1983 include an additional item.

Proposed Rule: Payout Priorities For Involuntary Liquidation of Federally Insured Credit Unions.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Modification of CLF Credit Agreements with all Borrowers to Include a "Prepayment Penalty."
4. Central Liquidity Facility Reserving Policy For Fiscal Year 1984.
5. Central Liquidity Facility Agent Reimbursement Policy Modification.
6. Interpretive Ruling and Policy Statement, Federal Credit Unions Engaging in Leasing Programs.
7. Proposed Deregulation of Lending Regulation, Part 701.21, NCUA Rules and Regulations.
8. Consideration of the Operating Fee for Calendar Year 1984.
9. Report on Status of National Credit Union Share Insurance Fund.
10. Report on NCUA Amendments to Senate Banking Committee.

The meeting will be held at 2:00 p.m. in the Birmingham Hilton, 808 South 20th Street, Birmingham, AL 35205.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[S-1563-83 Filed 11-3-83; 4:26 pm]

BILLING CODE 7535-01-M

6

NATIONAL TRANSPORTATION SAFETY BOARD

(NM-83-26)

TIME AND DATE: 9 a.m. Tuesday,
November 15, 1983.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., S.W., Washington, D.C. 20594.

STATUS: The first two items will be open to the public; the remainder will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Rear End Collision Between Two Burlington Northern Railroad Company Freight Trains, Pacific Junction, Iowa, April 13, 1983.

2. *Highway Accident Report:* Humboldt County Dump Truck/Klamath-Trinity Unified District Schoolbus Collision, State Route 96, near Willow Creek, California, February 24, 1983.

3. *Opinion and Order:* Petition of Fox, Dkt. SM-3096; disposition of respondent's appeal.

4. *Opinion and Order:* Commandant v. Foedisch, Dkt. ME-95; disposition of appellant's appeal.

CONTRACT PERSON FOR MORE

INFORMATION: Sharon Flemming (202) 382-6525.

November 4, 1983.

[S-1564-83 Filed 11-4-83; 1:34 pm]

BILLING CODE 4910-58-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, November 10, 1983
(Revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED: Thursday,
November 10:

9:30 a.m.

Discussion of Treatment of Management Issues in TMI-1 Restart Proceeding [Public Meeting] (As Announced)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (Items Revised)

a. Amendments to 10 CFR 50 Related to Hydrogen Control

b. Proposed Final Rule—Deletion of Exception Filing Requirement for Appeal from Initial Decisions

c. Final Rulemaking Concerning Fitness for Duty for Personnel (Postponed from November 3)

d. Final Immediate Effectiveness Order for San Onofre 2 and 3 (Postponed from November 3)

2:00 p.m.

Discussion/Possible Vote on SECY-83-293—Amendments to 10 CFR 50 Related to Anticipated Transients Without Scram (ATWS) Events (Public Meeting) (New Item)

ADDITIONAL INFORMATION: On November 3 the Commission voted 5-0 to hold "Meeting on Classified, Export-Related Matters", held that day; the meeting is to be continued at 4:00 p.m., Wednesday, November 9 (Closed—Ex. 1).

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

November 3, 1983.

Walter Magee

Office of the Secretary.

S-1566-83 Filed 11-4-83; 3:29 pm]

BILLING CODE 7590-01-M

8

POSTAL SERVICE (BOARD OF GOVERNORS)

Vote to Close Meeting

At its meeting on October 31, 1983, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for December 5, 1983, in Washington, D.C. The meeting will involve: (1) Consideration of the August 26, 1983, Recommended Decision of the Postal Rate Commission on third-class bulk rates for nonprofit mail in Docket No. R-80-1; (2) consideration of a proposed new approach to the delivery of expedited mail; and (3) a discussion of possible strategies in anticipated collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984.

The meeting is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, McKean, Ryan, Sullivan and Voss; Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; General Counsel Cox; Senior Assistant Postmasters General Coughlin, Jellison and Morris; and Counsel to the Governors Califano.

As to the first two of these agenda items, the Board is of the opinion that public access to the discussions would be likely to disclose information that will become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, these portions of the meeting are exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because they are likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted

from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussions are exempt, because they are likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

As to the third agenda item, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on

the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United

States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

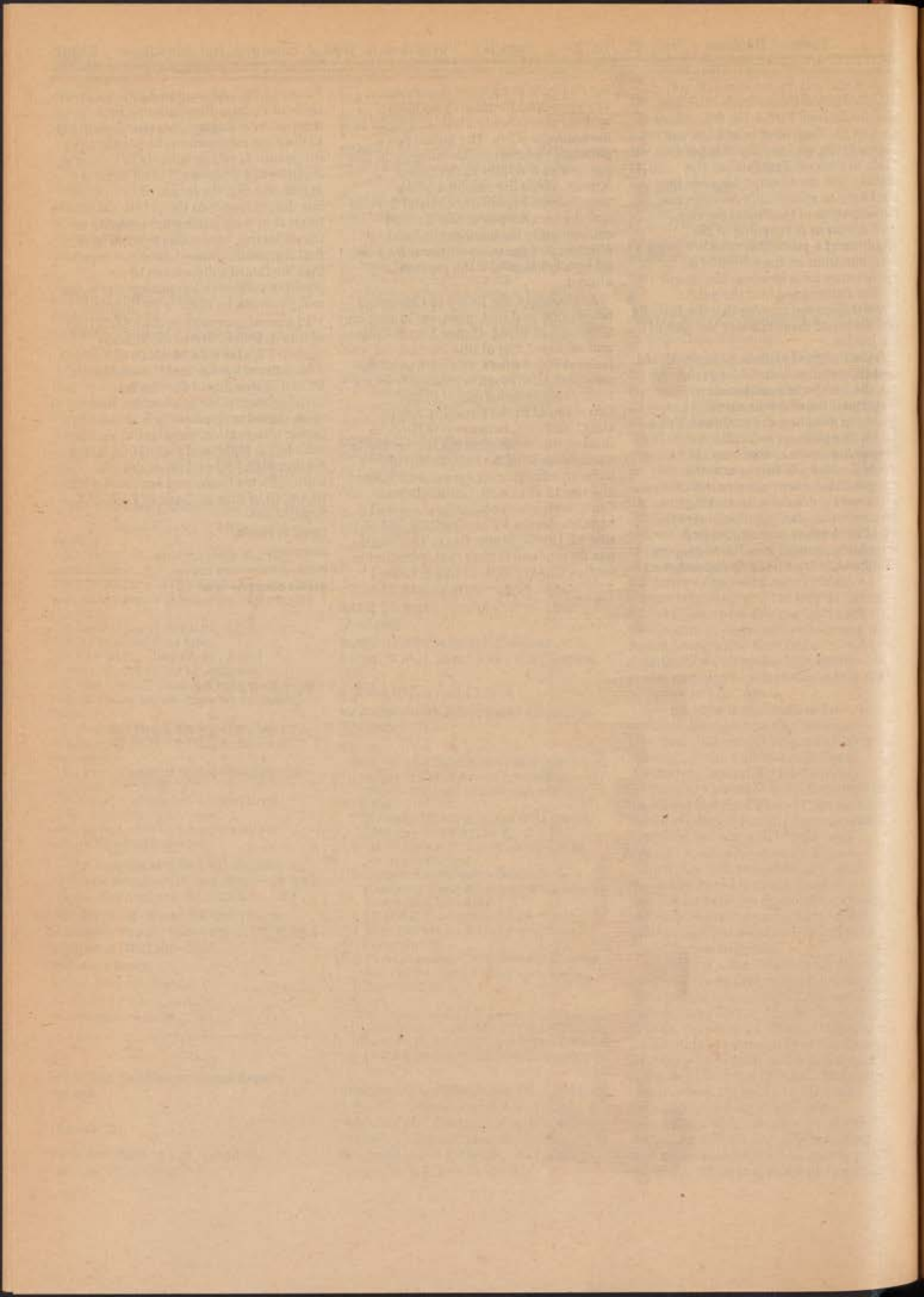
In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.3(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(3), (9)(B) and (10) of title 5 and section 410(c)(3) and (4) of title 39, United States Code, and section 7.3(c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[S-1503-83 Filed 11-4-83; 11:26 am]

BILLING CODE 7710-12-M



Federal Register

Tuesday
November 8, 1983

Part II

Environmental Protection Agency

Water Quality Standards Regulation

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 35, 120, and 131**

(WH-FRL 2466-3)

Water Quality Standards Regulation**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: This Regulation revises and consolidates in a new Part 131 the existing regulations now codified in 40 CFR Parts 120 and 35 that govern the development, review, revision and approval of water quality standards under Section 303 of the Clean Water Act (the Act). The Regulation was revised to reflect the experiences gained in the program by both EPA and the States. More explicit information is included in the Regulation on what EPA expects as part of State water quality standards reviews. The Regulation also clarifies that in promulgating Federal standards, EPA is subject to the same requirements as the States.

EFFECTIVE DATE: December 8, 1983.**FOR FURTHER INFORMATION CONTACT:**

David K. Sabock, Environmental Protection Agency, Chief, Criteria Branch (WH-585), 401 M Street SW., Washington, 20460 (202) 245-3042.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) proposed changes to 40 CFR 120 and 35 on October 29, 1982 (47 FR 49234) and invited comments until February 10, 1983. Eleven public meetings were held nationwide on the proposed revisions. Nine hundred twenty people attended those meetings. EPA received 1405 letters and statements on the proposal prior to the closing of the public comment period. Comments received on the proposed Regulation may be inspected at the Environmental Protection Agency, Room 2818M, 401 M Street, SW., Washington, D.C. 20460 during the Agency's normal working hours of 8:00 a.m. to 4:30 p.m. For further information contact the individual listed above.

Information in this preamble is organized as follows:

- A. Major changes made in the Proposed Rule
- B. Regulatory Impact Analyses, Regulatory Flexibility Act and Paperwork Reduction Act Requirements
- C. List of Subjects in 40 CFR 131

Appendix A—Response to Public Comments**A. Major Changes Made in the Proposed Regulation**

The major additions and deletions made in the proposed Rule are

discussed in this section. We have also included a table summarizing all the changes.

Commitment to the Goals of the Clean Water Act

Several changes were made in the Regulation to reassure the public that EPA is committed to achieving the goals of the Act. EPA accepted the recommendations for including regulatory language explicitly affirming EPA's commitment to have standards move toward the Section 101(a)(2) goals of the Act and to use standards as a basis of restoring and maintaining the integrity of the Nation's waters.

A "Purpose" section (§ 131.2) has been added to the Regulation. The Purpose states that standards are to protect public health or welfare, enhance the quality of water and provide water quality for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water, as well as for agricultural and industrial purposes and navigation. In addition, this section describes the dual role of water quality standards in establishing the water quality goals for a specific water body and in serving as the regulatory basis for the establishment of water quality based treatment controls and strategies beyond that level of treatment required by sections 301(b) and 306 of the Act.

The final regulation also clarifies that when a State changes the designated uses of its waters such that the uses of the water body do not include the uses specified in the Section 101(a)(2) goals of the Act (i.e., the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water), the State will have to demonstrate, through a use attainability analysis, that these uses are not attainable based on physical, chemical, biological or economic factors. This use attainability analysis is required for future changes that the State may make and for previous actions that the State took to designate uses for a water body which did not include the uses specified in Section 101(a)(2). Where water quality improvements result in new uses, States must revise their standards to reflect these new uses (See § 131.10(i)). This provision continues an existing EPA requirement although it was omitted from the proposed Regulation.

In addition, as discussed below, we have revised the proposed Antidegradation Policy to provide special protection for high quality waters and waters which constitute an outstanding National resource (See

§ 131.12) and we have eliminated the benefit-cost analysis.

We believe that these and other changes and clarifications in the Final Rule demonstrate EPA's commitment to the objectives, goals and spirit of the Clean Water Act.

Changes in Uses

The provisions included in § 131.10(h)(1)-(6) of the proposed Regulations, which dealt with circumstances under which uses could be changed, received substantial comment. Many commenters objected that the change in the phrase "States must demonstrate" to "States must determine" that certain conditions exist would mean that EPA would require less rigorous analyses for changing a use. They indicated that "determine" merely connotes a political process whereas "demonstrate" implies substantial proof supported by exacting analyses. EPA believes that structured scientific and technical analyses should be required to justify removing or modifying designated uses that are included in Section 101(a)(2) of the Act or to justify continuation of standards which do not include these uses. EPA agrees that the word "demonstrate" better reflects Agency policy and has made that change (see § 131.10(g)).

Some commenters asked whether modifications in water quality standards, such as defining a level of protection for aquatic life or setting seasonal standards, were changes in standards subject to the public participation requirements of § 131.20(b) of the regulation. Yes, any modification or change that a State makes in its standards is subject to those requirements.

Many commenters also objected to the inclusion of a benefit-cost assessment in justifying changes in uses. Historically, economic considerations have been a part of water quality standards decisions. Senate Report No. 10 on the Federal Water Pollution Control Amendments of 1965, 89th Congress, 1st Session, included the statement that "Economic, health, esthetic, and conservation values which contribute to the social and economic welfare of an area must be taken into account in determining the most appropriate use or uses of a stream". Section 303(c)(2) of the Act provides that "... standards shall be established taking into consideration their use and value for ... various water uses. Under the 1975 regulation governing the establishment of standards in Part § 35.1550(c)(1), States were to "... take into consideration environmental,

technological, social, economic, and institutional factors" in determining the attainability of standards for any particular water segment. In addition, there is and has been an economic consideration in the antidegradation policy. The Agency recognizes that there are inherent difficulties in a balancing of the benefits of achieving the Section 101(a)(2) goals of the Act with the costs. As a result, the Agency was persuaded that the provision in the existing rule allowing changes in designated uses where there would be substantial and widespread economic impact better reflected the process required by the Act. For these reasons, the wording of the existing regulation has been retained.

Several commenters objected to proposed § 131.10(h)(5) which allowed States to remove or to modify designated uses which are not attainable based on physical factors. After considering the comments, the Agency decided to limit the reference to physical factors to aquatic life protection uses and to clarify the existing policy.

Physical factors may be important in evaluating whether uses are attainable. However, physical limitations of the stream may not necessarily be an overriding factor. Common sense and good judgment play an important role in setting appropriate uses and criteria. In setting criteria and uses, States must assure the attainment of downstream standards. The downstream uses may not be affected by the same physical limitations as the upstream uses. There are instances where non-water quality related factors preclude the attainment of uses regardless of improvements in water quality. This is particularly true for fish and wildlife protection uses where the lack of a proper substrate may preclude certain forms of aquatic life from using the stream for propagation, or the lack of cover, depth, flow, pools, riffles or impacts from channelization, dams, diversions may preclude particular forms of aquatic life from the stream altogether. EPA recognizes that while physical factors also affect the recreational uses appropriately designated for a water body, States need to give consideration to the incidental uses which may be made of the water body. Even though it may not make sense to encourage use of a stream for swimming because of the flow, depth or the velocity of the water, the States and EPA must recognize that swimming and/or wading may occur anyway. In order to protect public health, States must set criteria to reflect recreational uses if it appears that

recreation will in fact occur in the stream.

In keeping with the purposes of the Act, the wording of § 131.10(h)(4) of the proposed Rule (now § 131.10(g)(4)) was modified so that changes in uses could only occur if dams, diversions or other types of hydrologic modifications preclude rather than just interfere with the attainment of the designated uses. It should also be pointed out that if physical limitations of the water body were used as the basis of not including uses for a water body that are specified in Section 101(a)(2) of the Act, those physical factors must be reviewed every three years.

While many commenters objected to the number of reasons the States could use in justifying changes in uses, the Agency decided to keep the six factors, with the changes described above, because they better explain when changes may be made. The terse wording of the existing Rule does not adequately explain when changes can be made.

A number of comments related to use attainability analyses. In demonstrating that a use is not attainable, States will be required to prepare and submit to EPA a use attainability analysis. A use attainability analysis is a multi-step scientific assessment of the physical, chemical, biological and economic factors affecting the attainment of a use. It includes a water body survey and assessment, a wasteload allocation, and an economic analysis, if appropriate.

A water body survey and assessment examines the physical, chemical and biological characteristics of the water body to: identify and define the existing uses of that water body; determine whether the designated uses in the State water quality standards are impaired, and the reasons for the impairment; and assist States in projecting the potential uses that the water body could support in the absence of pollution. A wasteload allocation utilizes mathematical models to predict the amount of reduction necessary in pollutant loadings to achieve the designated use. Economic analyses are appropriate in determining whether the more stringent requirements would cause substantial and widespread economic and social impact. These analyses should address the incremental effects of water quality standards beyond technology-based or other State requirements. The Agency's guidance suggests that States consider effects due to compliance by private and municipal dischargers. If the requirements are not demonstrated to have a substantial and widespread impact on the affected community, the

standard must be maintained or made compatible with the goals of the Act.

There was considerable comment on whether the use attainability analyses should be required, and if so when. In keeping with section 510 of the Act, EPA is not requiring States to conduct and submit a use attainability analysis if adding a use specified in Section 101(a)(2) of the Act or a use requiring more stringent criteria. In the final rule, EPA is requiring that States conduct and submit to EPA a use attainability analysis if the State (a) is designating uses for the water body such that the water body will not have all uses which are included in Section 101(a)(2) of the Act, (b) maintaining uses for the water body which do not include all of the uses in Section 101(a)(2) of the Act, (c) removing a use included in Section 101(a)(2) of the Act or (d) modifying a use included in Section 101(a)(2) of the Act to require less stringent criteria. A State need only conduct a use attainability once for a given water body and set of uses. During subsequent triennial review, States will be required to review the basis of not including uses for the water body that are specified in Section 101(a)(2) of the Act to show that circumstances have not changed and that protection and propagation of fish, shellfish and wildlife and/or recreation in and on the water remain unattainable. If such uses have become attainable, the standard must be revised accordingly (See § 131.20(a)). However, States may wish to conduct a use attainability analysis, even where not required, if they believe that there will be questions as to whether the protection and propagation of fish, shellfish and wildlife and recreation in and on the water is, in fact, attainable.

The guidance on conducting the water body survey and assessment is included in the *Water Quality Standards Handbook*. The earlier draft of the Handbook has been revised and expanded. Test cases illustrating the water body survey and assessment guidance have been completed and are included in the Handbook. In addition, the Agency has published a *Technical Support Manual: Water Body Surveys and Assessments for Conducting a Use Attainability Analysis*. These publications may be obtained by writing or calling David K. Sabock at the address and phone number listed under **FOR FURTHER INFORMATION CONTACT**.

By publishing guidance on conducting use attainability analyses, EPA is not requiring that specific approaches, methods or procedures be used. Rather, States are encouraged to consult with EPA early in the process to agree on

appropriate methods and procedures for conducting any of the analyses before the analyses are initiated and carried out. States will have the flexibility of tailoring the analyses to the specific water body being examined as long as the methods used are scientifically and technically supportable.

EPA will review the adequacy of the data, the suitability and appropriateness of the analyses and how the analyses were applied. In cases where the analyses are inadequate, EPA will identify how the analyses need to be improved and will suggest the type of evaluation or data needed. When the State has initially consulted EPA on the analyses to be used, EPA will be able to expedite its review of the State's analyses of any new or revised State standard.

Criteria

EPA has revised the section on criteria (§ 131.12 in the proposal; renumbered to § 131.11 in the final rule) in several respects. First, EPA has accepted the recommendation that the phrase "criteria are compatible with" protecting a designated use is confusing and unnecessary and should be removed. The provision now reads: "States must adopt those water quality criteria that protect the designated use."

In addition, EPA consolidated parts of the provisions and stated more concisely the basis of EPA's review of the appropriateness of State criteria. Section 131.11(a) now reads: "Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use," eliminating the need for proposed § 131.12(c) (1)-(3).

A number of comments concerned criteria for toxic pollutants. Some questioned EPA's commitment to controlling toxic pollutants based on the fact that EPA was not "requiring" States to adopt specific numerical toxic pollutant criteria. EPA has made a number of changes to more clearly reflect our commitment. For example, EPA has tried to restructure § 131.11(a)(2) on toxic pollutants to assist States in providing the most effective control of toxic pollutants as possible. All States have a requirement in their standards that their waters be free from toxic pollutants in toxic amounts. States are to review their water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely impacting water quality or the designated uses or where the level of a

toxic pollutant in the water is at a level to warrant concern. States are expected to conduct such reviews beginning with an in-depth analysis of water bodies with known toxic pollutant problems. States are to adopt numerical or narrative criteria for those toxic pollutants of concern. Numerical criteria are appropriate where a few specific pollutants have been identified as the concern, or where human health rather than aquatic life is the controlling factor. To implement such criteria, models are used to translate the specific criterion on a chemical-by-chemical basis into a wasteload allocation to obtain a specific permit limit.

However, where the effluent or ambient conditions are complex, due to multiple dischargers or multiple pollutants, toxic pollutant limits may be more appropriately set through narrative criteria (such as the "free from statements"). Where narrative criteria are adopted, the State should indicate as part of its water quality standards submission, how it intends to regulate the discharge of the toxic pollutants. Biological monitoring is one mechanism to test compliance with "free from" narrative criteria. Biological monitoring may include periodic sampling of the ecosystem, trend monitoring and/or periodic bioassays using the effluent. Acute and chronic toxicity testing methods have been developed that enable a permit writer to ensure that the discharge will not be toxic to aquatic life. When using biological monitoring to test compliance with narrative criteria, reference should be made to the maximum acceptable levels of toxicity and the basic means by which these levels are to be measured or otherwise determined.

Both the pollutant-by-pollutant and biological methods are being refined and need to be applied in a conservative fashion. They hold great promise and are relatively inexpensive. In many cases a combination of biological monitoring and a chemical-by-chemical approach will provide the best toxic pollutant control.

Finally, a number of comments dealt with site-specific criteria. It was apparent from the comments that some commenters had the mistaken impression that EPA was advocating that States use site-specific criteria development procedures for setting all criteria as opposed to using the national Section 304(a) criteria. Site-specific criteria development procedures are not needed in all situations. Many of the procedures are expensive. Site-specific criteria development appears most appropriate on water quality limited water bodies where:

- Background water quality parameters, such as pH, hardness, temperature, suspended solids, etc., appear to differ significantly from the laboratory water used in developing the Section 304(a) criteria; or

- The types of local aquatic organisms in the region differ significantly from those actually tested in developing the Section 304(a) criteria.

The protocols for establishing site-specific criteria, as well as the test cases illustrating use of the protocols, are included in the *Water Quality Standards Handbook*. EPA also has a limited number of copies of *Recalculation of State Toxic Criteria* using the family recalculation procedure. These publications may be obtained by writing or calling David K. Sabock at the address and phone number listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this Rule.

Antidegradation Policy

The preamble to the proposed rule discussed three options for changing the existing antidegradation policy. Option 1, the proposed option, provided simply that uses attained would be maintained. Option 2 stated that not only would uses attained be maintained but that high quality waters, i.e. waters with quality better than that needed to protect fish and wildlife, would be maintained (that is, the existing antidegradation policy minus the "outstanding natural resource waters" provision). Option 3 would have allowed changes in an existing use if maintaining that use would effectively prevent any future growth in the community or if the benefits of maintaining the use do not bear a reasonable relationship to the costs.

Although there was support for Option 2, there was greater support for retaining the full existing policy, including the provision on outstanding National resource waters. Therefore, EPA has retained the existing antidegradation policy (Section 131.12) because it more accurately reflects the degree of water quality protection desired by the public, and is consistent with the goals and purposes of the Act.

In retaining the policy EPA made four changes. First, the provisions on maintaining and protecting existing instream uses and high quality waters were retained, but the sentences stating that no further water quality degradation which would interfere with or become injurious to existing instream uses is allowed were deleted. The deletions were made because the terms "interfere" and "injurious" were subject to misinterpretation as precluding any activity which might even momentarily

add pollutants to the water. Moreover, we believe the deleted sentence was intended merely as a restatement of the basic policy. Since the rewritten provision, with the addition of a phrase on water quality described in the next sentence, stands alone as expressing the basic thrust and intent of the antidegradation policy, we deleted the confusing phrases. Second, in § 131.12(a)(1) a phrase was added requiring that the level of water quality necessary to protect an existing use be maintained and protected. The previous policy required only that an existing use be maintained. In § 131.12(a)(2) a phrase was added that "In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully". This means that the full use must continue to exist even if some change in water quality may be permitted. Third, in the first sentence of § 131.12(a)(2) the wording was changed from "... significant economic or social development..." to "... important economic or social development..." In the context of the antidegradation policy the word "important" strengthens the intent of protecting higher quality waters. Although common usage of the words may imply otherwise, the correct definitions of the two terms indicate that the greater degree of environmental protection is afforded by the word "important."

Fourth, § 131.12(a)(3) dealing with the designation of outstanding National resource waters (ONRW) was changed to provide a limited exception to the absolute "no degradation" requirement. EPA was concerned that waters which properly could have been designated as ONRW were not being so designated because of the flat no degradation provision, and therefore were not being given special protection. The no degradation provision was sometimes interpreted as prohibiting any activity (including temporary or short-term) from being conducted. States may allow some limited activities which result in temporary and short-term changes in water quality. Such activities are considered to be consistent with the intent and purpose of an ONRW. Therefore, EPA has rewritten the provision to read "... that water quality shall be maintained and protected," and removed the phrase "No degradation shall be allowed..."

In its entirety, the antidegradation policy represents a three-tiered approach to maintaining and protecting various levels of water quality and uses. At its base (Section 131.12(a)(1)), all existing uses and the level of water

quality necessary to protect those uses must be maintained and protected. This provision establishes the absolute floor of water quality in all waters of the United States. The second level (Section 131.12(a)(2)) provides protection of actual water quality in areas where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water ("fishable/swimmable"). There are provisions contained in this subsection to allow some limited water quality degradation after extensive public involvement, as long as the water quality remains adequate to be "fishable/swimmable." Finally § 131.23(a)(3) provides special protection of waters for which the ordinary use classifications and water quality criteria do not suffice, denoted "outstanding National resource water." Ordinarily most people view this subsection as protecting and maintaining the highest quality waters of the United States: that is clearly the thrust of the provision. It does, however, also offer special protection for waters of "ecological significance." These are water bodies which are important, unique, or sensitive ecologically, but whose water quality as measured by the traditional parameters (dissolved oxygen, pH, etc.) may not be particularly high or whose character cannot be adequately described by these parameters.

General Policies

Except for a general statement that States may adopt policies affecting the application and implementation of standards and that such policies are subject to EPA review and approval, all other elements of proposed Section 131.13 have been deleted, including the detailed statements on mixing zones, low flow exemptions, and variances.

Specific subsections on mixing zones, low flow exemptions and variances were deleted because, as the public comments suggested, they were not regulatory in nature and therefore were more appropriately addressed in guidance. More detailed information on these subjects is included as guidance in the *Water Quality Standards Handbook*.

Many objected to the temporary variance policy because it appeared to be outside the normal water quality standards setting process and because the test for granting a variance was different from that applied to changing a designated use. While a variance does not change a standard *per se*, there was concern that such a policy would stimulate "pollution shopping" or would unfairly penalize firms that had

managed their operations to maintain a profit while installing pollution control equipment, to the advantage of those that had not.

EPA has approved State-adopted variances in the past and will continue to do so if: each individual variance is included as part of the water quality standard, subject to the same public review as other changes in water quality standards and if each individual variance is granted based on a demonstration that meeting the standard would cause substantial and widespread economic and social impact, the same test as if the State were changing a use based on substantial and widespread social and economic impact. EPA will review for approval individual variances, not just an overall State variance policy. A State may wish to include a variance as part of a water quality standard rather than change the standard because the State believes that the standard ultimately can be attained. By maintaining the standard rather than changing it, the State will assure further progress is made in improving water quality and attaining the standard. With the variance provision, NPDES permits may be written such that reasonable progress is made toward attaining the standards without violating Section 402(a)(1) of the Act which states that NPDES permits must meet the applicable water quality standards.

State Review

Section 131.20(a) was changed from the proposal in several respects. These changes were made in response to the public's concern that the language in the proposed regulation either removed or diluted the Act's requirement to review all standards every three years and that EPA's proposed regulatory language did not provide adequate recognition of the goals of the Act. First, the language on the 3-year review requirement was changed to read exactly as the Act. It now reads that "the State shall, from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards."

Second, a mandatory review and upgrading requirement has been added. On segments with water quality standards that do not include all of the uses specified in Section 101(a)(2) of the Act, States must reexamine the basis of that decision every three years to determine whether any new information, technology, etc. has become available that would warrant adding the protection and propagation

of fish, shellfish and wildlife and/or recreation in and on the water.

Third, EPA has retained the concept of allowing a State to select specific water bodies for an in-depth review of the appropriateness of the water quality standard. This was done in order to make maximum use of limited resources and ensure that the most critical environmental problems are addressed. This review could include an examination of the use, the existing water quality criteria, and the need for revised or additional criteria on segments where the standards are not projected to be achieved with

implementation of the technology-based requirements of the Act. Factors which may cause a State to select a water body for review include areas where advanced treatment and combined sewer overflow funding decisions are pending, major water quality-based permits are scheduled for issuance or renewal, toxic pollutants have been identified or are suspected of precluding the attainment of water quality standards. This list is not meant to be all inclusive, and a State may have other reasons for examining a particular standard. The procedures established for identifying and reviewing such water

bodies should be incorporated into the State's Continuing Planning Process.

There were numerous comments either advocating mechanisms to ensure the right of dischargers to petition the State to review particular standards or advocating the burden of proof be on the discharger to justify any changes in standards. EPA does not believe that it should dictate particular administrative mechanisms that States use to initiate the review of standards on particular water bodies. However, we do believe that whatever mechanism the State uses, it should be made known to the public and included in the State's Continuing Planning Process document.

SUMMARY OF THE CHANGES MADE IN THE PROPOSED REGULATION

Section No. in the proposed regulation	Section No. in the final regulation	Title	Summary of changes
131.1	131.1	Scope	No change made.
	131.2	Purpose	New section Purpose. Defines the dual purpose of water quality standards. Standards establish the water quality goals for a specific water body and serve as a regulatory basis for the establishment of water quality based controls beyond the technology required under the Act consistent with Section 101(a)(2) and 303(c) of the Act.
131.2	131.3	Definitions	Minor changes made in the definitions of "criteria," "Section 304(a) criteria" and "water quality standards." Definition of "uses" and "attain" were removed. A definition of a "Use Attainability Analysis" was added.
131.3	131.4	State Authority	Word "reviewing" added to sentence "States are responsible for reviewing, establishing and revising water quality standards."
131.4	131.5	EPA Authority	The wording of this section has been slightly revised to show that EPA makes a determination of "whether" State standards meet the five criteria. Subsection (c) revised to read "whether the State has followed its legal procedures for revising or adopting standards." Subsection (d) modified to read "whether the State standards are based on appropriate technical and scientific data and analyses" rather than "whether the decision making process is based on appropriate technical and scientific data and analyses." Subsection (e) added to include minimum requirements for State submission.
131.5	131.6	Minimum Requirements for Water Quality Standards Submissions	Under (d) the statement now reads: "An Antidegradation policy consistent with § 131.12." Under (e) after Attorney General the phrase "or other appropriate legal authority within the State" was added.
131.10	131.10	Designation of Uses	Statement added to (a) prohibiting designating a stream for waste transport or assimilation. Added a new (b) that in designating uses of a water body and the appropriate criteria, States are to ensure the attainment and maintenance of downstream standards. Removed (c). The Antidegradation Policy is now described in § 131.12. Section (b) renumbered (c), removed (e), Section (f) renumbered (e), and Section (g) renumbered (f). Paragraph (h) now (g) has been changed. It now requires that a State must demonstrate that the designated use, which is not an existing use, is not attainable. Items 4 and 6 were also reworded. Item 4 now reads that changes in uses can be justified if dams, diversions or other types of hydrologic modifications preclude the attainment of a use rather than just interfere with the attainment of a use. Item 5 limits the consideration of physical factors to aquatic life protection uses. Item 6 has been totally changed. It now reads that changes in uses can be made if controls more stringent than those required by Section 301(b) and 306 of the Act would result in substantial and widespread economic and social impact. In paragraph (i) now (h), (2) and (3) are consolidated. Subparagraph (4) has been eliminated because of the revision to the Antidegradation Policy (see § 131.12). Subparagraph (5) now appears in § 131.5(b). New paragraph (i) requires States to revise their standards to reflect improvements in water quality. In paragraph (j), EPA has defined that States must conduct a Use Attainability Analysis if designating uses not specified in Section 101(a)(2) of the Act, when removing a use specified in Section 101(a)(2) or if modifying uses specified in Section 101(a)(2) by requiring less stringent criteria. Paragraph (k) clarifies that States are not required to conduct a Use Attainability Analysis when designating uses specified in Section 101(a)(2) of the Act.
131.11		Analysis for Changing or Modifying Uses	Eliminated.
131.12	131.11	Criteria	Eliminated. Under (a)(1) the phrase "are compatible with" has been removed and following the first sentence the following has been added: "Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For water with multiple use designations, the criteria shall support the most sensitive use." Subparagraph (a)(2) has been revised to read that States must review water quality data and information and where toxic pollutants may be adversely affecting the attainment of the water quality or the attainment of the designated use or where the levels of toxic pollutants are at a level to warrant concern must adopt criteria for the toxic pollutants. Where States adopt narrative criteria for toxic pollutants, the State must adopt a policy identifying the method by which the State intends to regulate point source discharges based on such narrative criteria. Subparts (b)(2) and (3) were combined.
	131.12	Antidegradation Policy	Paragraph (c) has been removed because the concepts are now included in paragraph (a). The Antidegradation Policy found in the former 40 CFR 25.1550(a) has been adopted into the final Regulation with several modifications. The phrase "interfere with or become injurious to" was removed, a phrase was added in (a)(1), (2), and (3) to maintain and protect instream water quality to protect existing uses, in (a)(2) "important" replaces "significant" in the phrase on economic and social development, and "no degradation" was deleted from (a)(3).
131.13	131.13	General Policies	Paragraph (a) revised to clarify that General Policies if adopted are to be included in a State's water quality standards and are subject to EPA review and approval. Subsections (b)(1)(d) removed.
131.20	131.20	State Review and Revision of Water Quality Standards	Paragraph (a) State Review has been rewritten to track the wording in the Act on the three year review of water quality standards. States are required to review every three years State standards on segments that do not include uses specified in Section 101(a)(2) of the Act to determine whether these standards are still appropriate. Finally a statement has been added that procedures States use to identify water bodies for review should be incorporated into their Continuing Planning Process document. Under paragraph (c) after 30 days we added a phrase, "of the final State action to adopt and certify" to clarify when the 30 day time period starts.

SUMMARY OF THE CHANGES MADE IN THE PROPOSED REGULATION—Continued

Section No. in the proposed regulation	Section No. in the final regulation	Title	Summary of changes
131.21	131.21	EPA Review and Approval of Water Quality Standards.	No Change.
131.22	131.22	EPA Promulgation of Water Quality Standards.	Paragraphs (a) and (b) were clarified to indicate Administrator may promulgate as well as just propose standards. Under paragraph (c), a requirement was added that EPA in promulgating water quality standards is also subject to the public participation requirements of this Regulation.

B. Regulatory Impact Analysis and Regulatory Flexibility Analysis and Paperwork Reduction Act Requirements

Under Executive Order 12291, EPA must judge whether a Regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. It is difficult for EPA to assess the likely net cost of this Regulation because of the offsetting character of its basic provisions. The Regulation does establish new obligations on the States for control of toxic pollutants. However, the Regulation also increase the ability of the States to determine the attainability of stream uses, to set site-specific criteria sufficient to protect those uses, and to focus limited State and Federal resources on reviewing standards for priority water quality limited segments. These changes are designed to enable States to better use water quality standards as a pragmatic tool in improving water quality where necessary to protect water uses. For these reasons the Agency judges this not to be a major Regulation under Executive Order 12291.

This notice 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 through contracting the person listed at the beginning of this notice.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that, for reasons discussed above, this Rule does not have significant adverse impact on small entities.

The information collection provisions in this rule have been approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned control number 2040-0049.

List of Subjects

40 CFR Part 35

Water pollution control.

40 CFR Part 120

Water pollution control.

40 CFR Part 131

Water pollution control, Intergovernmental relations, Administrative practices and procedures, Reporting and record keeping.

Dated: November 2, 1983.

William D. Ruckelshaus,
Administrator.

PART 35—STATE AND LOCAL ASSISTANCE

§ 35.1550 [Removed]

1. Section 35.1550 is removed.

PART 120—WATER QUALITY STANDARDS

§§ 120.1-120.3 [Removed]

2. Sections 120.1 through 120.3 are removed.

§§ 120.27 and 120.43 [Removed]

3. Sections 120.27 and 120.43 are removed.

4. Part 131 is added as set forth below:

4A. Subparts A, B, and C are added as follows:

PART 131—WATER QUALITY STANDARDS

Subpart A—General Provisions

Sec.

131.1 Scope.

131.2 Purpose.

131.3 Definitions.

131.4 State authority.

131.5 EPA authority.

131.6 Minimum requirements for water quality standards submission.

Subpart B—Establishment of Water Quality Standards

131.10 Designation of uses.

131.11 Criteria.

131.12 Antidegradation policy.

131.13 General policies.

Subpart C—Procedures for Review and Revision of Water Quality Standards

Sec.

131.20 State Review and Revision of Water Quality Standards.

131.21 EPA Review and Approval of Water Quality Standards.

131.22 EPA Promulgation of Water Quality Standards.

Authority: Clean Water Act, P.L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

Subpart A—General Provisions

§ 131.1 Scope.

This part describes the requirements and procedures for developing, reviewing, revising and approving water quality standards by the States as authorized by Section 303(c) of the Clean Water Act. The reporting or recordkeeping (information) provisions in this rule were approved by the Office of Management and Budget under 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* (approval number 2040-0049).

§ 131.2 Purpose.

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in Sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

Such standards serve the dual purposes of establishing the water

quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act.

§ 131.3 Definitions.

(a) *The Act* means the Clean Water Act (Public Law 92-500, as amended, (33 U.S.C. 1251 *et seq.*)).

(b) *Criteria* are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

(c) *Section 304(a) criteria* are developed by EPA under authority of Section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. This information is issued periodically to the States as guidance for use in developing criteria.

(d) *Toxic pollutants* are those pollutants listed by the Administrator under Section 307(a) of the Act.

(e) *Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

(f) *Designated uses* are those uses specified in water quality standards for each water body or segment whether or not they are being attained.

(g) *Use Attainability Analysis* is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).

(h) *Water quality limited segment* means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by Sections 301(b) and 306 of the Act.

(i) *Water quality standards* are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(j) *States* include: the 50 States, the District of Columbia, Guam, the

Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 131.4 State authority.

States are responsible for reviewing, establishing and revising water quality standards. Under Section 510 of the Act, States may develop water quality standards more stringent than required by this regulation.

§ 131.5 EPA authority.

Under Section 303(c) of the Act, EPA is to review and to approve or disapprove State-adopted water quality standards. The review involves a determination of: (a) Whether the State has adopted water uses which are consistent with the requirements of the Clean Water Act; (b) whether the state has adopted criteria that protect the designated water uses; (c) whether the State has followed its legal procedures for revising or adopting standards; (d) whether the State standards which do not include the uses specified in Section 101(a)(2) of the Act are based upon appropriate technical and scientific data and analyses, and (e) whether the State submission meets the requirements included in Section 131.6 of this part. If EPA determines that State water quality standards are consistent with the factors listed in (a)–(e) of this subsection, EPA approves the standards. EPA must disapprove the State water quality standards and promulgate Federal standards under Section 303(c)(4) of the Act, if State adopted standards are not consistent with the factors listed in (a)–(e) of this subsection. EPA may also promulgate a new or revised standard where necessary to meet the requirements of the Act.

§ 131.6 Minimum requirements for water quality standards submission.

The following elements must be included in each State's water quality standards submitted to EPA for review:

(a) Use designations consistent with the provisions of Sections 101(a)(2) and 303(c)(2) of the Act.

(b) Methods used and analyses conducted to support water quality standards revisions.

(c) Water quality criteria sufficient to protect the designated uses.

(d) An antidegradation policy consistent with § 131.12.

(e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.

(f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the uses specified in Section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.

Subpart B—Establishment of Water Quality Standards

§ 131.10 Designation of uses.

(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(c) States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.

(d) At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under Sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.

(e) Prior to adding or removing any use, or establishing sub-categories of a use, the State shall provide notice and an opportunity for a public hearing under § 131.20(b) of this regulation.

(f) States may adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses, however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.

(g) States may remove a designated use which is not an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can

demonstrate that attaining the designated use is not feasible because:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by Sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(h) States may not remove designated uses if:

(1) They are existing uses, as defined in Section 131.3, unless a use requiring more stringent criteria is added; or

(2) Such uses will be attained by implementing effluent limits required under Sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(i) Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

(j) A State must conduct a use attainability analysis as described in § 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in Section 101(a)(2) of the Act or to adopt subcategories of uses specified in Section 101(a)(2) of the Act which require less stringent criteria.

(k) A State is not required to conduct a use attainability analysis under this

Regulation whenever designating uses which include those specified in Section 101(a)(2) of the Act.

§ 131.11 Criteria.

(a) Inclusion of pollutants:

(1) States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

(2) Toxic Pollutants—States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR Part 35).

(b) Form of criteria: In establishing criteria, States should:

(1) Establish numerical values based on:

- (i) 304(a) Guidance; or
- (ii) 304(a) Guidance modified to reflect site-specific conditions; or
- (iii) other scientifically defensible methods;

(2) establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

§ 131.13 General policies.

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to EPA review and approval.

Subpart C—Procedures for Review and Revision of Water Quality Standards

§ 131.20 State review and revision of water quality standards.

(a) State Review: The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in Section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in Section 101(a)(2) of the Act are attainable, the State shall revise its

standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) **Public Participation:** The State shall hold a public hearing for the purpose of reviewing water quality standards, in accordance with provisions of State law. EPA's water quality management regulation (40 CFR 130.3(b)(6)) and public participation regulation (40 CFR Part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) **Submittal to EPA:** The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

§ 131.21 EPA review and approval of water quality standards.

(a) After the State submits its officially adopted revisions, the Regional Administrator shall either:

(1) notify the State within 60 days that the revisions are approved, or

(2) notify the State within 90 days that the revisions are disapproved. Such notification of disapproval shall specify the changes needed to assure compliance with the requirements of the Act and this regulation, and shall explain why the State standard is not in compliance with such requirements. Any new or revised State standard must be accompanied by some type of supporting analysis.

(b) The Regional Administrator's approval or disapproval of a State water quality standard shall be based on the requirements of the Act as described in §§ 131.5, and 131.6.

(c) A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

(d) EPA shall, at least annually, publish in the *Federal Register* a notice of approvals under this section.

§ 131.22 EPA promulgation of water quality standards.

(a) If the State does not adopt the changes specified by the Regional

Administrator within 90 days after notification of the Regional Administrator's disapproval, the Administrator shall promptly propose and promulgate such standard.

(b) The Administrator may also propose and promulgate a regulation, applicable to one or more States, setting forth a new or revised standard upon determining such a standard is necessary to meet the requirements of the Act.

(c) In promulgating water quality standards, the Administrator is subject to the same policies, procedures, analyses, and public participation requirements established for States in these regulations.

§§ 120.12 and 120.34 [Redesignated as §§ 131.31 and 131.33]

4B. Sections 120.12 and 120.34 are redesignated as §§ 131.31 and 131.33 respectively and constitute Subpart D, of new Part 131. The heading of new § 131.31 is revised to read "§ 131.31 Arizona". The table of contents for new Subpart D is set forth below:

Subpart D—Federally Promulgated Water Quality Standards

131.31 Arizona

131.33 Mississippi.

Authority: Clean Water Act, Pub. L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

5. The heading for Part 120 is removed and reserved.

[Note.—Appendix A will not appear in the CFR.]

Appendix A—Response to Public Comments

The public comments and statements submitted to EPA on the proposed Water Quality Standards Regulation before the close of the comment period are summarized in a separate publication, "Summary of Public Comments on the Proposed Water Quality Standards Regulation," March 11, 1983. Limited numbers of the Summary are available from David K. Sabock at the address listed under **FOR FURTHER INFORMATION CONTACT.**

This appendix describes EPA's response to the recommendations for changes in the proposed Regulation. Similar recommendations have been grouped together. Major additions and deletions made in the Rule in response to public comments are described in greater detail in the Preamble. Subjects discussed in the Preamble, along with EPA's rationale for accepting or rejecting the public's suggestions include: commitment to the goals of the Clean Water Act, changes in uses (including comments on benefit-cost assessments), criteria, the

antidegradation policy, general policies, and State review.

Definitions

Several commenters asked what waters were included in the Standards program. We changed the term "navigable waters" to "waters of the United States" in the Regulation to avoid confusion. The CWA defines "navigable waters" as "waters of the United States," a broader class of waters than considered "navigable" under some other statutes.

A number of recommendations were made to improve the series of definitions relating to uses. The terms "uses" and "attain" were removed from the list of definitions as being unnecessary to define. A definition of "Use Attainability Analysis" was added as a means of providing a common basis for understanding this analysis. This definition is derived from the language of the existing Regulation. The recommendation that the definition of "water quality limited segment" be moved from the Preamble of the proposed Rule to the definition section of the final Rule was accepted. The definition is important to understanding certain provisions of the Rule and is, therefore, logically part of the Rule.

Several suggestions were offered regarding the definition of "criteria" which resulted in the addition of "or narrative statement" after "concentration or level" and the deletion of the final sentence to remove the erroneous implication that only numerical values may be established. However, we rejected the suggestion that we include in the definition of criteria a statement that criteria are purely scientific determinations and do not consider the availability of treatment technology or the costs or economic impact of such treatment requirements, because to do so would be misleading. Section 304(a) criteria developed by EPA are purely scientific determinations, published as guidance for the State's use. They are not enforceable. Criteria adopted as part of State water quality standards are set taking into consideration the protection of a particular designated use, and thus may indirectly reflect a judgment as to the availability of treatment technologies needed to attain that use and the associated economic impacts. Such criteria, adopted as part of a State standard, are enforceable.

State Review of Water Quality Standards

There was considerable public comment on the subject of *State Review*

of *Water Quality Standards*, primarily directed to the apparent lack of EPA's commitment to the goals and philosophy of the Clean Water Act and the substitution of a review of standards for a limited number of priority water bodies in lieu of a Statewide review of standards at least once every 3 years. These concerns were addressed in detail in the Preamble and will only be briefly discussed here.

Because of the overwhelming support for the Section 101(a)(2) goals of the Act, EPA added a requirement that any stream segment with uses not specified in Section 101(a)(2) of the Act be re-examined every 3 years by the State to determine if new information has become available. If such new information indicates that the uses specified in Section 101(a)(2) are attainable, the State shall revise its standards accordingly. This provision in effect established a mandatory requirement to "upgrade" water quality standards as a balance to the provisions allowing the "downgrading" of standards. This policy also removes problems dealing with equity considerations among competing dischargers. Dischargers on a stream with an unduly "low" designated use should not be given an advantage over dischargers on streams whose designated uses and criteria were properly set to reflect attainable uses.

We have retained the statutory 3-year review requirement. The proposed regulation was intended to implement that requirement, but subsequent statements on priority water bodies in that subsection of the proposal and discussions in the Preamble and *Water Quality Standards Handbook* tended to confuse the issue. Many commenters thought EPA was attempting to delete or minimize that requirement. This is not EPA's intention.

EPA has changed the language in part 131.20 to emphasize the statutory nature of the 3-year review of all State standards. However, EPA continues to believe that the concept of focusing limited State resources on specific water bodies is an appropriate management technique to ensure that the most critical environmental problems are adequately addressed. The Preamble discusses this in more detail.

In addition, many commenters erroneously assumed that EPA was proposing a rigid system for determining priority water bodies. EPA has no rigid priority system in mind other than assuming the States will address known problems first. Rather, EPA views setting priorities as a basic management tool and a necessary step for States to make the best use of limited resources.

Priority lists are viewed as flexible working documents, not as mandatory lists. Public involvement in developing these lists is encouraged.

Although there were suggestions that EPA define for States the processes that should be used in establishing the list of priority water bodies, the Act does not require such guidance and EPA does not believe it is appropriate to do so. However, whatever procedures States establish should be incorporated into the States Continuing Planning Process document and be made known to the public-at-large.

Antidegradation Policy

EPA's proposal, which would have limited the antidegradation policy to the maintenance of existing uses, plus three alternative policy statements described in the preamble to the proposal notice, generated extensive public comment. EPA's response is described in the Preamble to this final rule and includes a response to both the substantive and philosophical comments offered. Public comments overwhelmingly supported retention of the existing policy and EPA did so in the final rule.

EPA's response to several comments dealing with the antidegradation policy, which were not discussed in the Preamble are discussed below.

Option three contained in the Agency's proposal would have allowed the possibility of exceptions to maintaining existing uses. This option was either criticized for being illegal or was supported because it provided additional flexibility for economic growth. The latter commenters believed that allowances should be made for carefully defined exceptions to the absolute requirement that uses attained must be maintained. EPA rejects this contention as being totally inconsistent with the spirit and intent of both the Clean Water Act and the underlying philosophy of the antidegradation policy. Moreover, although the Agency specifically asked for examples of where the existing antidegradation policy had precluded growth, no examples were provided. Therefore, wholly apart from technical legal concerns, there appears to be no justification for adopting Option 3.

Most critics of the proposed antidegradation policy objected to removing the public's ability to affect decisions on high quality waters and outstanding national resource waters. In attempting to explain how the proposed antidegradation policy would be implemented, the Preamble to the proposed rule stated that no public participation would be necessary in certain instances because no change

was being made in a State's water quality standard. Although that statement was technically accurate, it left the mistaken impression that all public participation was removed from the discussions on high quality waters and that is not correct. A NPDES permit would have to be issued or a 208 plan amended for any deterioration in water quality to be "allowed". Both actions require notice and an opportunity for public comment. However, EPA retained the existing policy so this issue is moot. Other changes in the policy affecting ONRW are discussed in the Preamble.

Designation of Uses

The question of whether there is a hierarchy of uses generated much discussion. Many indicated there is no hierarchy of uses since none of the uses mentioned in Section 303(c) of the Clean Air Water Act are ranked or were put into any order of priority. However, others believed that fish, wildlife and recreation or potable water supply clearly have precedence. The short answer is that Congress, in setting the goals in Section 101(a)(2), established that, where attainable, water quality "shall provide for the protection of fish, shellfish, wildlife and recreation in and on the water. . ." Therefore, EPA has revised the proposed regulation to better emphasize the uses specified in the Section 101(a)(2) goals of the Act. Under the final regulation, wherever States have set or set uses for a water body which do not include all of the uses specified in Section 101(a)(2) of the Act, they must conduct a use attainability analysis to demonstrate that these uses are not attainable. Of course, if they are not attainable, the State must select one or more of the other uses included in 303(c)(2). While the States need only conduct a use attainability analysis once, every three years States will have to review the basis of prior decisions to designate uses a water body which do not include uses specified in Section 101(a)(2) of the Act to determine if there is any information which would warrant a change in the standards. This change responds positively to the criticism that the proposed regulation settled for the status quo and did not adequately support the improvement of water quality.

The provision in the proposal allowing States to designate subcategories of aquatic use (Section 131.10(b)) has been changed slightly in the final rule (Section 131.10(c)) in response to suggestions made by various commenters. EPA is attempting to convey the concept that some use classifications included in the Act and

in State standards are so broad that they do not adequately describe to the public the actual use to be protected. The final rule provides that a State may, because of physical, chemical, biological, and economic factors, wish to adopt sub-categories of a use and set criteria appropriate to protect a particular use sub-category. The alteration of the language from the proposal to the final rule specifically follows suggestions that uses other than aquatic life protection should be covered, and that factors other than economics should be considered, in designating particular sub-categories of uses.

Many of the comments on setting sub-categories of uses levels of aquatic protection, and seasonal uses were similar, focusing primarily on the availability of guidance and the adequacy of information on how to establish levels of protection or seasonal uses. Guidance is available in the *Water Quality Standards Handbook* on what considerations are involved in determining levels of protection and seasonal uses to designating appropriate uses for a water body. The availability of information will vary depending on the site involved. EPA intends to continually improve the scientific and technical basis of the guidance and to revise such guidance from time to time. Moreover, EPA will not approve standards unless they are based on sound scientific and technical analysis. Establishing sub-categories of uses and seasonal uses are optional considerations on the part of the State.

Several commenters suggested that EPA establish a minimum level of protection. EPA believes it provides the basic scientific information on various levels of protection with the water quality criteria recommendations under Section 304(a) of the Act. However, for EPA to mandate certain levels of aquatic life protection within a use would override the primary authority of the State to adopt use classifications and supporting criteria through public hearings. EPA does not believe as being valid the concern expressed by the public that when establishing various levels of protection that the most sensitive species will not be protected. The degree of protection may vary depending upon what life stage of the most sensitive species the public wishes to protect. For example, water quality criteria necessary to protect spawning of aquatic life generally requires more stringent water quality criteria than does protection of the species during other stages of its life cycle. If spawning is not part of a designated use for a

specific water body, then less stringent criteria levels may be established and they will be adequate to protect the use fully.

The public also was concerned that uses or sub-categories of uses would not be based on original habitat conditions. It has never been the intention of the water quality standards program to bring all waters to a pristine condition or necessarily to set standards based on original habitat conditions. In the first instance, some waters are naturally of "poor" quality, and in the second, man has changed the environment and there are instances where an attempt to correct or control some sources of pollution either simply cannot be effected or would cause more environmental damage to correct than to leave in place.

In response to comments that the provision on seasonal uses was too loose, we revised the wording to clarify that the criteria may not be adjusted in a way that precludes a more protective use in another season.

A basic policy of the standards program throughout its history has been that the designation of a water body for the purposes of waste transport or waste assimilation is unacceptable. At the public's suggestion, an explicit statement of this policy has been added to § 131.10(a). The objective is to prevent water bodies from being used as open sewers. Thus, this "no waste transport" policy does not mean that wastes cannot be conveyed by barge or boat; such activity is encompassed by the navigation use designation.

Use Attainability Analysis

Because of the wide range of comments on the use attainability analysis, EPA revised the regulation to better define when such an analysis is appropriate. The changes were described in the Preamble.

EPA also reworded the proposed concept of the use attainability analysis to include, where appropriate, an analysis of the economic impacts of attaining a use consistent with or more stringent than the Section 101(a)(2) goals of the Act. EPA agrees with the comments that attainability and affordability are integral components of the same analyses. This is consistent with the previous regulation, which provided that, in determining attainability, States were to consider economic factors (§ 35.1550(c)(1)).

In the proposed Rule, EPA recommended conducting a benefit-cost assessment in determining whether the benefits of attaining a use bear a reasonable relationship to the costs. That concept has been removed from

the final Rule. As explained in the preamble, the Agency was persuaded by the arguments that there are inherent conceptual and procedural difficulties in balancing the benefits of achieving the Section 101(a)(2) goals versus the costs. The final regulation avoids these problems while still recognizing the relevance of economic factors in determining attainability. The Agency has retained the concept that economic analysis be judged on substantial and widespread economic and social impact.

Defining Attainable Uses

Several recommendations were made to delete references to Section 301(c) from the definition of the minimum baseline technology defining when a use is considered attainable and cannot be modified or removed. They also suggested making 301(c) waivers subject to the requirements of proposed § 131.13(c). The Agency believes that it is appropriate to use all applicable sections of the Act in defining the minimum technology based requirements of the Act; section 301(c) is one such section. In addition, Section 301(c) prescribes the eligibility requirements for a Section 301 waiver. Therefore, EPA has not made the suggested changes relating to Section 301(c).

Others pointed out that the proposed rule did not, but should, allow a mix of point and nonpoint source controls in determining whether a use is attainable. It was not EPA's intent to prevent that type of analysis, and the final regulation has been clarified by combining the two paragraphs on point and nonpoint source controls with the word "and" in § 131.10(h).

Other comments on nonpoint sources focused on the use of the terminology "cost effective and reasonable best management practices." EPA used the term "cost effective and reasonable best management practices" to cover the development of nonpoint source controls with Section 205(j) funding. We believe generally that nonpoint source controls developed as part of a State's water quality management plan are cost effective and reasonable. If a designated use can be attained through such BMPs, it would be inconsistent to allow a change in the use. Some comments also expressed concern that the Agency was forcing a mandatory regulatory program for nonpoint source controls through the Water Quality Standards Regulation. The Agency does not believe that the wording will impose any new requirements for the development of regulatory programs for nonpoint source controls; rather, the regulation simply

takes into account those programs which exist in ascertaining the minimum requirements. States are still free to review and revise their non-point source requirements in accordance with 208, 303(e), and 205(j).

One commenter recommended that the Agency include in the section on use attainability a discussion of the relationship between best management practices and water quality standards similar to that in *U.S. EPA, State and Area-wide Memorandum*, Number 32, Nov. 14, 1978. EPA has included that memorandum in the chapter on "Water Body Survey and Assessments for Conducting Use Attainability Analyses" in the *Water Quality Standards Handbook*.

Changes in Uses

EPA received substantial comment on § 131.10(h)(1)-(6) and (i)(1)-(6) of the proposed regulation, which deal with the circumstances under which changes may (or may not) be made in designated uses. These sections have been revised; the changes are discussed in Section A of the Preamble.

Criteria

We accepted the comment that the added test of criteria being "compatible with" protecting a designated use might raise the possibility of unnecessary debate over what is compatible with protecting a designated use. The sentence was revised to read "States must adopt water quality criteria that protect a designated use." In response to several comments, EPA also added language to clarify that criteria must be based on sound scientific rational and must contain sufficient parameters or constituents to protect the designated use. Some commenters apparently believe that the Agency continues to have a policy of "presumptive applicability" applied to the Federal water quality criteria or that the proposed Regulation recreated that policy. That policy existed from July 10, 1978 to Nov. 28, 1980, when it was rescinded. No such policy now exists nor is intended in the final rule. While States are free to draw on EPA's 304(a) criteria as support for State criteria, they are equally free to use any other criteria for which they have sound scientific support.

Comments received from the public clearly indicated concern that the proposed rule did not appear to provide sufficient emphasis on the control of toxic pollutants. The proposed paragraph on toxic pollutants was therefore strengthened to provide that States "must" review water quality data and information on dischargers to

identify where toxic pollutants may be adversely affecting the attainment of designated water uses and "must" adopt criteria to ensure the protection of the designated uses. Furthermore, where States adopt narrative statements for toxic pollutants, EPA is requiring that States submit along with their standards submission information identifying the method by which the State intends to regulate point source discharges of toxic pollutants based on the narrative provisions. For example, States may require biological monitoring of dischargers' effluents such that a particular tolerance or LC₅₀ value is not exceeded. EPA made these changes because it agrees that more emphasis needs to be placed on the control of toxic dischargers. Information on implementing methods will ensure that EPA and State have a common understanding of what the narrative criteria really mean, and will facilitate permit writing on water quality limited streams.

The regulation provides several ways of establishing water quality criteria, including criteria development based on site-specific characteristics. EPA's field tests of the proposed guidance supporting the concept of developing site-specific criteria, the comments received during the public review, and the review conducted by the Agency's Science Advisory Board identified difficulties with the proposed guidance. The final guidance has been carefully revised to reflect the concerns and comments received to ensure that the mechanisms used to develop site-specific criteria are scientifically credible. Research will also continue on improved techniques, and as validated they will be made available to the States.

General Policies

While many commenters supported including the General Policies provision (Section 131.13) in the framework of the Regulation, others recommended deleting the General Policies section from the Regulation and including it in guidance documents. Since much of the language in that proposed part was in fact guidance, EPA decided to delete paragraphs (b)-(d). Only the first part of the section which recognizes that States do adopt policies that impact on the implementation and application of water quality standards and that such policies, if adopted, are subject to EPA review and approval was retained.

EPA believes that it is important for the public to understand that while the adoption of these policies is optional, if adopted they are subject to EPA review and approval. EPA will continue to

include a discussion of mixing zones, low flows, variance and other general program policies in a guidance document, as has been done since 1975. Detailed guidance on these optional policies is included in the *Water Quality Standards Handbook*.

Resource Capabilities

The issue of resources was of concern to many. While some States over the years have collected the scientific and technical information to set appropriate water quality standards, others have done significantly less data collection. EPA recognizes that use attainability analyses and site specific criteria studies may require some States to program more resources for setting their water quality standards than in the past. However, the use attainability analyses apply only to water quality limited segments—segments where standards will not be attained even with implementation of technology-based controls of the Act, where the State wishes to justify uses less than "fishable/swimmable". Moreover, nothing in the guidance or in the requirement for conducting use attainability analyses suggests that every analysis be similar in scope and detail or that they must be intrinsically expensive and difficult. EPA expects quite the opposite to be true; the analyses only need to be sufficiently detailed to support the specific standards decision in question. Consequently, when attempting to establish appropriate aquatic protection uses it will, for example, be relatively simple to demonstrate to EPA that certain aquatic life forms will be unable to exist in an area because of physical factors regardless of the level of water quality attained, i.e., no level of water quality will induce fish to spawn in areas where the bottom strata are not what the particular species requires for spawning. In other instances, given the environmental problems, number of people involved, the cost of pollution control to municipalities and industries, and the political aspects of the situation, the use attainability analyses may be quite costly. Because resources are and will likely continue to be a problem, EPA recommends that States set priorities for conducting these analyses. The Agency also believes that it is appropriate for States to enlist the cooperation and resources of dischargers in conducting these analyses. EPA continues to believe that there is considerable expertise and data available from various State agencies that can be tapped to assist in establishing attainable standards. This

expertise does, of course, vary from State to State but that situation exists under any regulation EPA may promulgate.

In addition to the technical concerns on the development of site-specific criteria addressed earlier in both the Preamble and this Appendix, the public expressed concern with the cost of the procedures and the availability of State personnel to conduct and manage such procedures. Because it is a new concept in terms of application in a regulation, the Preamble to the proposed rule discussed the procedures in detail. This conveyed the impression that site-specific criteria development would be the basic method of setting water quality criteria. EPA believes the States will continue to base most of their standards on EPA developed Section 304(a) criteria because of the resource question and because of the fact that site-specific criteria will not be necessary in most water bodies. The Final Rule allows States to develop site-specific criteria; it does not require them to do so. As with use attainability analyses, States should set priorities and enlist the assistance of dischargers in conducting site specific criteria. EPA will be providing training seminars for State personnel in applying site-specific criteria development procedures. EPA is also developing simpler and improved techniques.

State/Federal Roles

There were a number of diverse comments on the sections of the proposed rule dealing with "State Review and Revision of Water Quality Standards", "EPA Review and Approval of Water Quality Standards" and "EPA Promulgation of Water Quality Standards".

Several comments on § 131.20 of the proposed regulation "State Review and Revision of Water Quality Standards", requested specific mechanisms be included in the regulation on how States should generate data and information, how to involve local government and industry in the data collection and decision making, how permittees could request a review of inappropriate water quality standards and how the public participates in the water quality standards revision process. All of these comments were evaluated but few changes were made other than those in § 131.20 which were described earlier. States are responsible, within the guidelines of Section 303(c) of the Act and the Water Quality Standards Regulation, for setting water quality standards. EPA does not believe it is appropriate to specify particular administrative mechanisms States must

use in that process. Ensuring such administrative uniformity would be disruptive to the States without yielding any significant environmental benefit.

There was also a recommendation to include in the rule the policy statement that was in the preamble to the proposal on the relationship of Section 24 of the "Municipal Waste Water Treatment Construction Grant Amendments of 1981" (Pub. L. 97-117, December 29, 1981, 33 U.S.C. 1313(a)), to water quality standards reviews. The Agency chose not to do so because, for the purposes of Section 24, water quality standards reviews are synonymous with the water quality standards reviews under Section 303(c) of the Act and the one final rule.

A number of letters and statements expressed concern that the various EPA Regional Offices will interpret the regulation differently. It is recognized that with 10 Regional Offices responsible for the review and approval of State water quality standards, there is potential for inconsistencies between Regions on recommended data and analyses. Of course, since water quality problems in different regions may vary considerably, the regions must also be able to respond to those problems in ways that make the most sense under the particular circumstances. However, it is believed that EPA's guidance and Headquarters evaluations of the Regional Offices will, to the extent possible, minimize inconsistencies in the interpretation of the Regulation by our Regional Offices.

There were suggestions that EPA change the rule to read that the State water quality standards go into effect only after EPA approval. Standards are adopted by States under State law. Consistent with the Clean Water Act, EPA's policy has always been that a State standard goes into effect when adopted by the State and remains in effect, even if disapproved, until the State revises its standards or EPA promulgates a Federal standard. This interpretation is necessary because otherwise there would be no standard at all until Federal action was completed. A State rescinds its prior standard whenever it adopts a revised standard. In addition, EPA approval of a standard should not be interpreted as superseding the State's right to amend its own laws. By the same token, if EPA promulgates a Federal standard, the State is obliged to apply that standard in its pollution control programs or until the State adopts a State standard identical to or more stringent than the Federal standards.

EPA proposed to publish a notice of approvals of State water quality

standards in the Federal Register at least annually. One letter requested that EPA publish the notice of approvals at the time the Agency take action. EPA believes that this action is unnecessary since publication of these notices (or any delay in publishing them) in no way affects the legal standing of the standards or the status of EPA's approval action. When a State adopts a standard, it publishes a notice under State law. This should be sufficient to ensure that the regulated community is informed of any changes in State water quality standards. EPA's annual publication will serve as a convenient check.

A number of respondents recommended that in promulgating State standards, EPA move expeditiously to avoid excessive delays. EPA's approach in disapproving State standards is to work with the State to assist the State in revising its standard to meet the Act's requirements. Only as a last resort will EPA promulgate Federal standards. In working with a State to revise its standard, EPA will try to do so within the timeframe of the Act. However, this may not always be possible depending on State administrative and/or legislative procedures. However, we intend to try harder to eliminate unnecessary delay.

In response to a number of questions raised, the final rule clearly states that in promulgating State standards, the Administrator will be subject to the same public participation policies and procedures established for States.

Interstate/International Water Quality Standards Issues

In the Preamble to the proposed water quality standards regulation, EPA discussed its role in interstate and international water quality standards issues. There were those that believed that EPA should include in the regulation specific procedures for resolving interstate/international conflicts and require States to adopt standards that meet treaty requirements. Since these issues have been associated with the standards program since its inception and have been adequately resolved previously without the need for regulatory language, EPA sees no need to include such language in the Final Rule.

When interstate/international conflicts arise, EPA will play a stronger role in the standards process in addition to the ordinary review and approval procedures described in the regulation. First, if an interstate conflict occurs between States in the same EPA region, the EPA Regional Administrator is in a

position to help resolve the dispute through the ability to review and approve each State's standards and by participating in the standards development process.

Interstate and interregional organizations can also play a positive role in this situation. Second, if the issue involves more than one EPA region and the EPA regions are unable to resolve the issues, then the EPA Administrator can be requested to render a judgment. While it is theroretically possible that

two States might have incompatible standards, both of which meet the requirements of the Act and this regulation, such as situation is likely to be rare. If it occurs, EPA will assist the States in resolving the inconsistency. The exact procedures will depend upon the specific circumstances. Therefore, we do not believe it is appropriate to include specific procedures in the Water Quality Standards Regulation to resolve interstate conflicts.

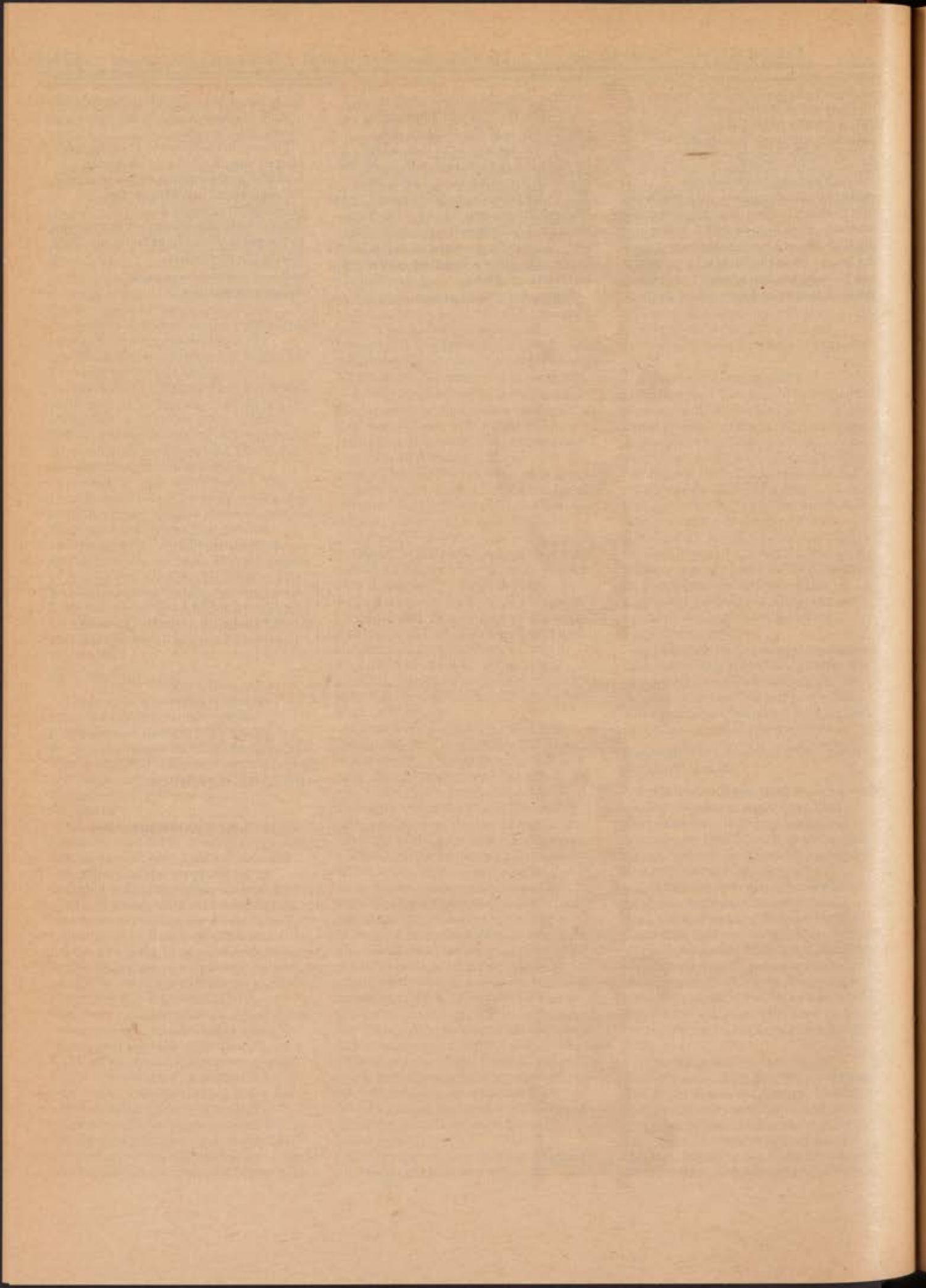
Any specific treaty requirements have

the force of law. Therefore, State water quality standards will have to meet any treaty requirements.

Finally, in response to commenters' suggestions, we have made some editorial and format changes to clarify the regulation. In addition, the substantive changes made to demonstrate the Agency's commitment to the goals of the Act should also help clarify the regulation.

[FR Doc. 83-30233 Filed 11-7-83; 8:45 am]

BILLING CODE 6560-50-M



federal register

**Tuesday
November 8, 1983**

Part III

Department of Transportation

Federal Aviation Administration

**Carpools on Dulles Access Highway;
Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 159

[Docket No. 23655; Amdt. No. 159-28]

Carpools on Dulles Access Highway

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: The Federal Aviation Regulations for the Dulles Airport Access Highway are amended to allow vehicles carrying two or more persons to use the Access Highway with a decal during peak commuter hours via the carpool entrances and exits at Reston Avenue and Trap Road. Prior to these amendments the highway has been restricted to airport users and 4-person carpools. The amendment allows single occupant vehicles, as well as carpools, with a decal to use the highway by "backtracking" through Dulles Airport.

DATES: Effective November 21, 1983, and will terminate on January 1, 1985, or on the date that the Dulles Toll Road is opened by the Commonwealth of Virginia, whichever is earlier. FAA will publish the termination date.

FOR FURTHER INFORMATION CONTACT:

Dexter Davis, Airport Manager, AMA-200, Dulles International Airport, P.O. Box 17045, Washington, D.C. 20041. Telephone: (703) 471-7596; or Edward S. Faggen, Legal Counsel, AMA-7, Hangar 9, Washington National Airport, Washington, D.C. 20001. Telephone: (703) 557-8123.

SUPPLEMENTARY INFORMATION:

Interested persons were invited to participate in the making of the policy for carpool use of the Dulles Airport Access Highway by a Notice of Proposed Rulemaking published by the FAA on June 6, 1983. [Notice No. 83-5, 48 FR 25215]. A supplemental notice was published on August 18 [48 FR 37430, Notice 83-5A]. An environmental assessment was prepared by the FAA and the Federal Highway Administration and placed in the public docket for review. Written comments were received from area citizens who use or want to use the Access Highway for commuting between their residences and workplaces. Comments were received from the Commonwealth of Virginia and elected representatives of the public at both the Federal and local levels. Comments were also received from the United States Department of Interior, the National Capital Planning Commission, the Metropolitan Washington Council of Governments,

the Air Transport Association and other organizations.

Action

Upon consideration of the comments and other pertinent information, FAA is adopting a regulation that lowers the carpool requirement from 4 or more persons per vehicle to 2 or more persons for vehicles entering and exiting the Access Highway via the carpool ramps at Reston Avenue and Trap Road. Single occupant vehicles (driver only) as well as carpools will be permitted to enter the Access Highway at all westbound entrances and proceed west to the airport, turn around at a designated point and proceed back eastbound. Two and 3-person carpools and single occupant vehicles must display a carpool decal in order to use the Access Highway. The decal will be easily identifiable and will have to be permanently affixed to the vehicle bumpers. The decals will be readily available at Dulles Airport and other locations in the Dulles Corridor.

Airport users will continue to have use of the Access Highway without restriction. The rule is interim in nature. Except for emergencies carpool and other non-airport uses of the Access Highway will be discontinued on January 1, 1985, or on the day the Dulles Toll Road opens, whichever is earlier.

Background

The Dulles International Airport Access Highway (Access Highway) is owned by the United States and maintained by the Department of Transportation (DOT), Federal Aviation Administration (FAA). The Administrator of the FAA, in accordance with a delegation of authority from the Secretary of Transportation, has the responsibility for the care, operation, maintenance, improvement and protection of Dulles Airport, including the Access Highway, and the Administrator has the authority to make and amend regulations in order to carry out this responsibility.

The Access Highway was built to provide rapid ground access from Washington, D.C., to Dulles Airport, which is located near Chantilly, Virginia, 26 miles from the downtown metropolitan center. The Access Highway was built in 1962 to accommodate airport traffic. To achieve this, the airport traffic was to be separated from commuter and local traffic. Since it has been open, the Access Highway has been restricted in general to airport-related traffic. The entrances and exits facilitate traffic to and from the west, that is, to and from the airport. There are only two restricted

entrances, other than at the airport itself, for vehicles traveling eastbound away from the airport. These are at Reston Avenue and Trap Road. These ramps were built for special, not general, access. Similarly, with the same two limited exceptions, the only westbound exit is at Dulles Airport.

FAA regulations have permitted non-airport uses by emergency vehicles, vehicles bound to or from the Wolf Trap Farm Park for the Performing Arts, buses being operated in common carriage, and Fairfax County school buses. Since April, 1980, vehicles occupied by four or more persons have also been permitted to use the Access Highway via the ramps at Reston Avenue and Trap Road during the morning and afternoon peak commuter periods. Four-person carpools are also permitted to enter the highway at Route 28 to travel to the airport, turn around, and use the highway eastbound. The reverse movement is allowed for carpools exiting at Route 28.

It is the FAA's intention that all non-airport uses of the Access Highway (other than emergencies) will cease when the high capacity, parallel roadway is completed. The Commonwealth of Virginia is presently constructing the lanes parallel to the Access Highway known as the Dulles Toll Road. The new highway is scheduled to open late in 1984 or early in 1985.

In addition to airport users, many residents and employees in the area use the Access Highway for commuting by proceeding west to the airport for the purpose of making a U-turn and then proceeding back eastbound. This has come to be known as "backtracking" and it enables commuters to avoid congested alternate routes. The practice is widespread. A detailed study in 1981 indicated that 6,400 cars entered Dulles Airport each day solely to reverse their direction of travel. Recent FAA police studies indicate that the number of daily commuter vehicles has increased to approximately 8,000. The practice has resulted in congestion on the airport roadways, particularly on the portion of the Access Highway between Route 28 and the Dulles terminal.

The Access Highway—I-66 Connection

FAA is completing the construction of an extension to the Access Highway from its present terminus at Route 123 to join I-66 near West Falls Church. The extension is to be completed and open to traffic at the end of October 1983. Travelers driving between Dulles and downtown Washington via the Access Highway and I-66 will have the use of a

free-flowing highway for the entire length of the trip. This will produce a 10-15 minute savings compared to the present routing and should be a significant benefit to Dulles Airport users.

Since its opening in December, 1982, traffic on I-66 between I-495 and the Theodore Roosevelt Bridge over the Potomac River has been restricted to high occupancy vehicles with 4 or more persons (HOV-4) during morning and afternoon peak commuter hours in the peak direction. The restrictions on I-66 were developed based on environmental studies and were incorporated into the January 5, 1977 decision by Secretary of Transportation Coleman as a response to the controversy over the environmental impact of I-66. The HOV-4 restrictions are enforced by Virginia Commonwealth and local police.

When the Access Highway connection to I-66 is completed this year, airport traffic will commingle with other traffic on I-66. During peak hours, legitimate airport traffic will be exempt from the HOV-4 restrictions as set forth by Secretary Coleman's decision. Other users of the Access Highway, including commuters, would also be able to gain access to I-66, which could be a violation of the HOV-4 restrictions. FAA has recognized from the time of the I-66 decision in 1977 that, when the connection of the Access Highway to I-66 was completed in 1983, commuter use of the Access Highway would have to be controlled. FAA, therefore, must now take action to control commuter use of the Access Highway to ensure that only airport-related traffic and HOV-4 vehicles enter I-66 by way of the Access Highway. It would have been ideal if the parallel lanes of the Dulles Toll Road were available to receive the local and commuter traffic that must be regulated after the Access Highway/I-66 connection is open. While the construction of the parallel lanes is progressing at a rapid pace, they will not be open until late 1984. Accordingly, FAA undertook this rulemaking action to determine the appropriate course to take in the interim period.

In Notice 83-5, FAA proposed to reduce the carpool requirement on the Access Highway (between the Airport and Route 123) from 4 or more persons to 2 or more persons per vehicle until January 1, 1985. The intent was to allow more commuters to gain lawful access to the Access Highway at the ramps now used by 4-person carpools until the toll road was open. Commuter vehicles would have to display a permanently affixed decal. Those vehicles with fewer

than 4 occupants would not be permitted to use I-66 when HOV-4 was in effect.

The comments received on Notice 83-5 indicated that the proposal for 2-person carpools, while welcome, did not go far enough in addressing the problem for commuters in the Dulles corridor. Many of the 8,000 persons would be unable to form carpools and would have to alter their driving habits by using other roads. These roads are already congested. It was contended that in the short period remaining to the opening of the Dulles Toll Road, the Dulles Access Highway could continue to accept commuter vehicles and maintain an acceptable level of service without backups and delays to airport users. FAA was urged to consider alternative policies that would permit backtracking in single occupancy vehicles to continue until the toll road is opened.

FAA responded by issuing supplemental Notice 83-5A where the following was stated:

FAA has been urged to consider * * * the alternative of authorizing all commuter vehicles to use the Access Highway with a decal regardless of the number of occupants in the vehicles. This alternative has several variations. Essentially, vehicles with a decal would be permitted to enter the Access Highway at one or more locations but could not use the connector road or I-66 without complying with the I-66 restrictions. This approach, it is urged, would keep thousands of vehicles that currently use the Access Highway from having to travel on already congested alternate routes. Also, it would be the least disruptive of established commuting patterns during the period that the Dulles Toll Road is under construction.

With this Notice, FAA is clarifying to parties interested in Notice 83-5 that although the proposed rule was drafted in terms of 2- and 3-person carpools, the scope of alternatives before FAA includes the option of adopting a commuter vehicle rule without an occupancy requirement in some form as well as the alternative of retaining the 4-person carpool requirements. Interested persons should consider this range of alternatives in presenting their comments.

Issues Presented

The comments overwhelmingly supported the proposal to lower carpool requirements from 4 persons to 2 persons at the Reston Avenue and Trap Road entrance to the Access Highway. There was also considerable support for the continuation of backtracking through Dulles by persons driving alone. From the context of the comments, it is clear that the supporters of greater commuter access understand that the non-airport use of the Access Highway will be temporary, that is, until the toll road opens, that airport users must not be

detrimentally impacted, and that the I-66 policies must not be compromised.

The rules adopted by FAA today accomplish each of these objectives.

FAA has protected the Dulles Access Highway for airport use for the entire twenty-one years of the highway's existence. It has been, and remains, the FAA's obligation to preserve the Federal Government's interest in the Access Highway. That interest is to provide access at a high level of service to Dulles Airport. The Access Highway was not built to accommodate local traffic needs. Commuter arteries are the responsibility of the state and local jurisdictions.

Today FAA is modifying the longstanding policy only because the Commonwealth of Virginia is now irrevocably committed to the construction and operation of a local service road in the Dulles Corridor. The Dulles Toll Road, which is being built parallel to the Access Highway in an easement from the FAA, is under construction and will be completed in approximately 15 months. At that time, all non-airport use, except emergency uses, will be excluded from the Dulles Access Highway. The Commonwealth of Virginia "strongly supports" FAA's intention to prohibit all non-airport use of the Access Highway when the parallel lanes are completed. The Commonwealth is concerned that if local traffic is permitted to use the Access Highway after the parallel lanes are completed the viability of those lanes would be jeopardized. FAA agrees, and in view of the Federal interest identified above, FAA will not permit non-airport uses of the Access Highway to continue after the parallel lanes are open.

For the interim period, opening the Access Highway as we do today will not undermine the Federal interest. In this regard, the FAA disagrees with the National Capital Planning Commission (NCPC) and the Transportation Planning Board (TPB) of the Metropolitan Washington Council of Governments. In its written comments, NCPC reiterated its longstanding policy in favor of maintaining the Access Highway "as a limited access roadway for the exclusive use of airport users." The NCPC and the TPB are concerned that additional carpool use will cause congestion on the Access Highway and at the interchanges of the Access Highway and Reston Avenue, the Access Highway and I-495 and at Route 123.

The traffic studies performed for FAA by the Federal Highway Administration do not project unacceptable delays and congestion at any point along the Dulles

Access Highway during the approximately 15 months that this rule will be in effect. The total number of backtracking vehicles should decrease, under the rule, from the present high levels since 2- and 3-person carpools will not have to backtrack to gain access to the highway. Traffic volumes are not expected to cause traffic backups at the exits to I-95 and Route 123.

The level of service on Reston Avenue at the interchange will decline somewhat from the present level. Increased activity on Reston Avenue was expected to occur at this interchange when the toll road opened. Today's rule moves up this use of Reston Avenue by approximately 15 months. The Reston Avenue ramps can accommodate the additional traffic and signal light timing adjustments by local authorities can reduce congestion. The delays and level of service on Reston Avenue will remain at acceptable levels. Many Reston residents favor the adopted rule because of the increased commuting options it provides.

In their comments, the Reston Commuter Bus, Inc., was concerned about possible loss of ridership and potential safety of bus patrons who get on and off the buses at the ramp locations. No safety-related problem is anticipated at these bus stops. The shoulder area on the right side of the ramp serves as a bus transfer point and a drop-off point for bus riders. There is no need for the pedestrian traffic that is transferring between buses, or persons who are waiting for a bus, to cross the lanes of automobile traffic. If it is necessary, normal traffic management techniques can be employed to assure continued pedestrian safety. As for transit ridership, only a slight decrease is expected due to a shift to 2-person carpools. There will be a greater incentive to use the bus after the Access Highway is connected to I-66 because the buses, and 4-person carpools which already use the Reston ramps, but not 2- and 3-person carpools, will be able to use I-66 during the peak commuter hours for rapid travel into the District of Columbia. Two- and 3-person carpools will have to exit the Access Highway at either I-495 or Route 123 as commuter vehicles do today.

FAA had traffic projections prepared for the proposal adopted today and for the alternative for allowing single occupant vehicles to use the carpool ramps to enter and exit at Reston Avenue and Trap Road. At present, in the morning peak hour the total volume of traffic using the Reston Avenue Ramps (eastbound and westbound) is approximately 620 vehicles. The rule

adopted today is expected to increase that total by 400 vehicles. The alternative of allowing single occupant vehicles to use the carpool ramps would increase the total by more than 1,100 vehicles to more than 1,700 vehicles on the ramps. The afternoon peak hour totals would similarly increase. At Trap Road in the existing morning peak hour the carpool ramps are used by only 20 vehicles. This is expected to increase under the rule adopted today to 200 vehicles. Under the alternative of single occupant usage the total expected would be 755 vehicles.

The projected single occupant vehicle use of the carpool ramps would lead to congestion on both Reston Avenue and Trap Road. Also, under the single occupant alternative there would be a possible detrimental impact on Wolf Trap Farm Park from the congestion on Trap Road. No negative impact on Wolf Trap Park results from the rules adopted today. Further, unlike the rule adopted today, the proposal to allow single occupant vehicles to use the carpool ramps did not receive strong support from the community. For these reasons, among others, FAA is not allowing single occupant vehicles to use the carpool ramps.

In all, the advantages to the local commuters from the rule adopted today are greater than under the other alternatives. The Governor of the Commonwealth of Virginia, the Fairfax County Board of Supervisors and the Northern Virginia Transit Commission have all urged the adoption of these rules. Under these rules, existing commuters on the Access Highway will not have to be added to already congested alternative routes because the Access Highway and crossroads can accommodate the expected commuter traffic.

Because the Federal interest is not disserved by allowing commuters to use the Access Highway for a short term, FAA has decided to allow such usage in consideration of the Commonwealth of Virginia's construction of the parallel lanes. The FAA retains the power to change these rules, as necessary, if the interests of Dulles Airport are jeopardized in any way.

Decals and Enforcement

Although one of FAA's objectives is to accommodate commuter traffic on the Access Highway until the Dulles Toll Road is open, FAA is also particularly sensitive to the Commonwealth of Virginia's responsibility to enforce the use restrictions on I-66 as required by Secretary of Transportation Coleman in 1977. In commenting in support of increased commuter use on the Access

Highway, Virginia Governor Charles Robb stated:

We would also like to emphasize the importance of the FAA enforcement strategy being fully operational upon the opening of the Dulles Connector. If the FAA does not prevent non-HOV-4/non-airport traffic from utilizing the Dulles Connector, the Commonwealth will be unable to enforce the peak-hour HOV-4 restrictions now imposed on I-66 by the Coleman Decision.

FAA agrees with the Commonwealth of Virginia and with Virginia Congressman Frank Wolf that there is a need to distinguish commuter vehicles from the airport traffic that is allowed to use the connector to I-66.

The rule adopted protects the policies on I-66. Commuter vehicles will be distinguished from the vehicles of airport users. Authorized carpools and single occupant vehicles will display permanently affixed decals. The decals will allow the vehicles onto the Access Highway as commuter vehicles, but these vehicles will not be able to use I-66 without complying with the HOV-4 or other I-66 requirements. State Police will be enforcing the I-66 restriction on the portion of Access Highway between I-66 and Route 123. Vehicles with a decal will be treated as commuter vehicles and may be stopped and the driver fined if the vehicle is not in compliance with the I-66 requirements. Legitimate airport traffic can use I-66 regardless of the number of vehicle occupants and the vehicles without a decal will normally be deemed to be legitimate airport traffic by the State Police. However, these vehicles will not be permitted to use the carpool ramps which will be manned or to use the commuter turning points at the airport. FAA police will be enforcing the Federal regulations at the airport and the driver of a vehicle without a decal that backtracks through the airport is subject to ticketing for unauthorized use of the Access Highway. FAA and the Commonwealth of Virginia are prepared to take all the appropriate enforcement action that is necessary against violators of the Access Highway and I-66 regulations.

Loudoun County, Virginia, while otherwise supporting the easing of carpool occupancy requirements, did not endorse the decal aspect of the proposal. The FAA has concluded, however, that the decal is necessary to distinguish between commuter vehicles and airport traffic.

FAA will try to make the decal available in a way that imposes only a minimal burden on the public. The decal will be obtainable for a nominal one time fee to offset costs. The FAA will

announce how and where decals may be obtained sufficiently in advance of the effective date of the regulation. No application forms will be required nor will any record be maintained of who obtains a decal.

Environmental Assessment

FAA, in conjunction with the Federal Highway Administration, has prepared an environmental assessment of this change to the carpool regulation. The assessment contains the traffic projections for the Access Highway, Route 28, Centerville Road, Reston Avenue, and Trap Road under each of the alternatives considered by the FAA. In 1980, the FAA prepared a detailed assessment of opening the Access Highway to 4-person carpools. At the time, the FAA concluded that the proposal would not have significant primary or secondary impacts upon the environment. The updated assessment of the change to the rules reveals no significant impact. The principal impacts relate to traffic flow and are secondary. Many persons who currently backtrack in single occupant vehicles to I-495 or Route 123 will form carpools to gain access to the same highways. Therefore, under the adopted rule, traffic on the Access Highway near the airport will decrease. There will be a slight increase in traffic volume east of Trap Road. There will be an increase in congestion at the Reston Avenue interchange. While reordering the flow of traffic somewhat in Fairfax and Loudoun Counties, the 2-person carpool is not likely to affect the volume or type of traffic passing through Arlington County, Virginia or other communities between the District of Columbia and Dulles Airport. The environmental impact statement on the Dulles Toll Road dealt extensively with the impacts of opening the corridor to increased traffic. Some of the traffic impacts will be brought on by this carpool regulation. There will be no significant increase in noise or air pollution from the amendment. There will be no impact on Wolf Trap Farm Park or other park lands.

The assessment is available for review and comment at the public docket at 800 Independence Avenue, SW., Room 916, at the Dulles Airport Manager's Office; and at Washington

National Airport, Office of the Director, (Hangar 9). A copy may be obtained by writing to: Mr. Henry L. Mahns, Engineering Division, West Lab Building, AMA-32, Washington National Airport, Washington, D.C. 20001.

List of Subjects in 14 CFR Part 159

Airports, Access highway, and Carpools.

Effective Date

The FAA has found that good cause exists to have this amendment become effective in less than 30 days after its publication. The amendment relieves restrictions on the Dulles Access Highway that would otherwise remain in effect. Further, the Dulles Access Highway extension is scheduled to open in less than 30 days after publication of this amendment. At that time this amendment prescribing the manner in which non-airport traffic can use the Access Highway must be effective to assure that the Access Highway, the extension and I-66 are used by authorized traffic only. For these reasons, under the Administrative Procedures Act, 5 U.S.C. 553(d), the amendment will be effective on November 21, 1983.

Amendment

In consideration of the above and of the material in Public Docket No. 23655, FAA is amending Part 159 of the Federal Aviation Regulations to permit carpools of two or more persons and single occupant vehicles to have access to the Dulles Airport Access Highway at designated locations until January 1, 1985, or until the parallel roadway being constructed by the Commonwealth of Virginia is open for traffic, whichever occurs first. FAA will publish the termination date.

PART 159—NATIONAL CAPITAL AIRPORTS

Section 159.35 of Part 159 of the Federal Aviation Regulations (14 CFR 159.35(b)), is amended by revising paragraph (b)(3), adding paragraph (b)(4) to read as follows and the introductory text of (b) is set out for the convenience of the reader:

§ 159.35 Use of access highway to Dulles International Airport.

(b) *Exceptions.* Any person may enter upon and travel over the Access Highway in the following vehicles:

(3) Until January 1, 1985, or until the opening of the highway in the Dulles Access Highway right-of-way parallel to the Access Highway in both directions between Route 28 and Route 123, whichever is earlier:

(i) A vehicle occupied by 4 or more persons,

(ii) A vehicle occupied by 2 or 3 persons displaying a decal that bears an FAA approval permanently affixed to the front and rear bumpers of the vehicle, or

(iii) A vehicle occupied by the driver only and displaying a decal that bears an FAA approval permanently affixed to the front and rear bumpers of the vehicle.

(4) A vehicle described in (b)(3) (i) and (ii) of this section shall be an authorized carpool and a vehicle described in (b)(3)(iii) of this section shall be an "authorized vehicle." The driver of such a carpool or vehicle shall operate in compliance with the requirements of road signs pertaining to the Access Highway erected or posted upon the Access Highway or the approaches thereto.

(Secs. 3 and 4 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a); (49 U.S.C. 106(g)). (Revised, Pub. L. 97-449, January 12, 1983))

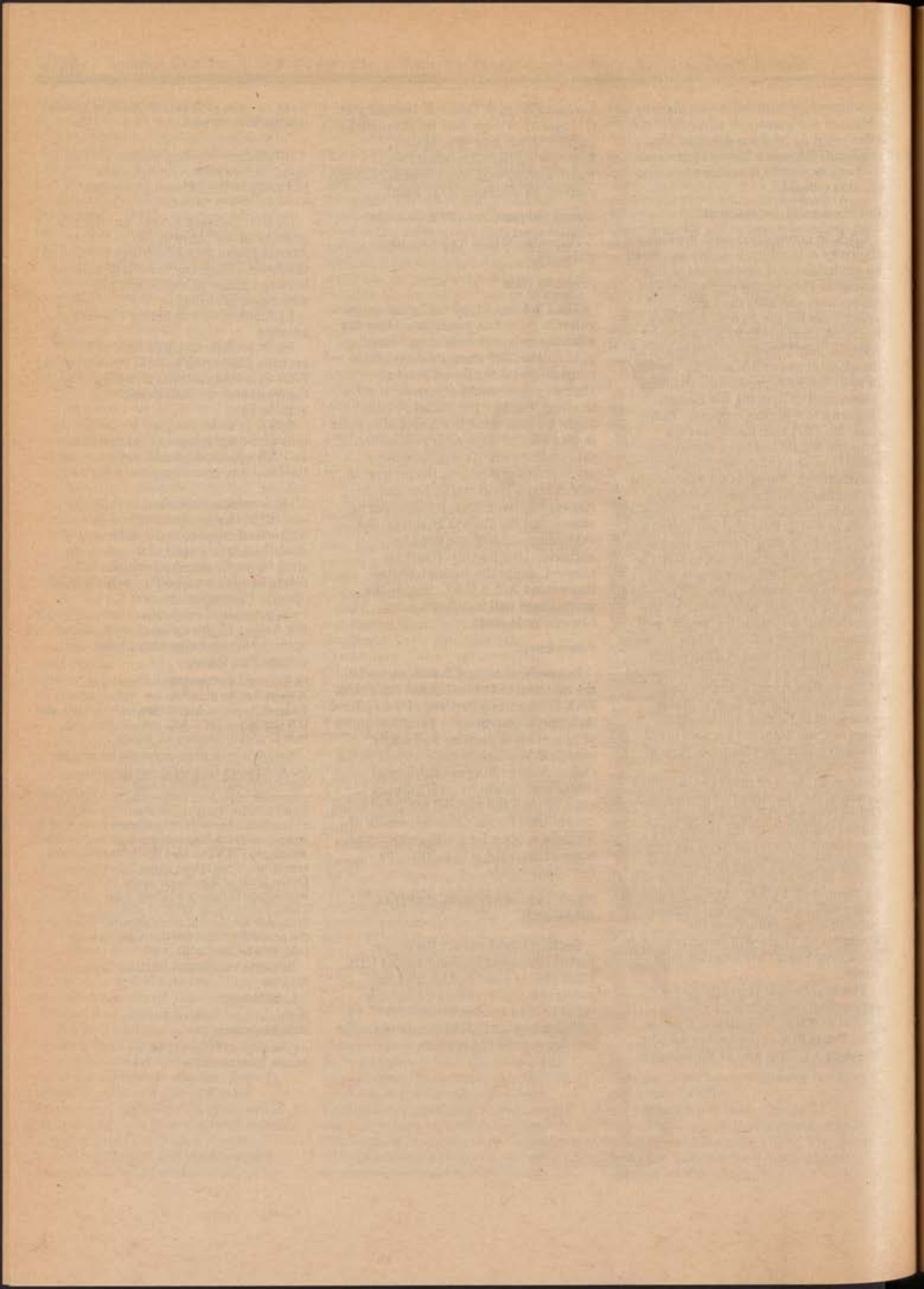
Note.—It is certified under the criteria of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. Only a few small entities are affected and the cost of implementation and compliance is deemed minimal. Based on the above, the FAA has also determined that the regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A detailed economic evaluation is not required because the economic impact of the regulation is judged to be minimal.

Issued in Washington, D.C., on September 30, 1983.

J. Lynn Helms,
Administrator, Federal Aviation
Administration.

[FR Doc. 83-30064 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-12-M



Federal Register

Tuesday
November 8, 1983

Part IV

Department of Agriculture

Animal and Plant Health Inspection
Service

Highly Pathogenic Avian Influenza;
Interim Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 83-114]

Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: Because of the finding of highly pathogenic avian influenza, this document establishes regulations quarantining portions of Berks, Dauphin, Lancaster, and Lebanon Counties in Pennsylvania and prohibiting the interstate movement from the quarantined area of poultry and certain other articles. This action is necessary to help prevent the interstate spread of this highly contagious and pathogenic viral disease of poultry.

DATES: Effective date is November 4, 1983. Written comments must be received on or before January 9, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION:

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that a emergency situation exists which warrants publication of this interim rule without prior opportunity for public comments. Immediate action is necessary to prevent the spread of highly pathogenic avian influenza.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found making this interim rule effective upon signature. Comments have been solicited for 60 days after publication of

this document. A final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

Background

This document establishes an interim rule on an emergency basis because of the recent finding of highly pathogenic avian influenza in poultry in areas of Pennsylvania. This disease is not otherwise known to occur in the United States.

Highly pathogenic avian influenza is a highly contagious and pathogenic viral disease of poultry. It is defined as a disease of poultry caused by any highly pathogenic influenza virus that results in not less than 75 percent mortality within 8 days in at least eight healthy susceptible chickens, 4 to 8 weeks old, inoculated by the intramuscular, intravenous, or caudal air sac route with bacteria-free infectious allantoic or cell culture fluids and using standard operating procedures to assure specificity. Clinical signs of the disease are evidenced by high morbidity, facial swelling, high mortality, and cessation of egg production.

Highly pathogenic avian influenza has been found to occur in poultry on five premises in the northwestern portion of Lancaster County in Pennsylvania. These areas remain infected at this time. These findings have been confirmed by laboratory tests at the National Veterinary Services Laboratory, Ames, Iowa.

The provisions in 9 CFR Part 81 currently regulate the movement of certain articles because of European Fowl Pest and Similar Poultry Diseases. This document revises this part and changes the heading to "Highly Pathogenic Avian Influenza and Similar Poultry Diseases" to more accurately reflect the nomenclature used by the scientific community.

Prior to the effective date of this document the regulations contained provisions concerning the interstate transportation of affected or exposed live poultry or materials and contained provisions concerning infected cars, premises, containers, and other accessories. These provisions are retained.

The interim rule provides that the following area in portions of Berks, Dauphin, Lancaster, and Lebanon Counties in Pennsylvania is quarantined because of highly pathogenic avian influenza:

That portion of Pennsylvania beginning at the eastern bank of the Susquehanna River at Interstate Highway 81; then northeasterly along Interstate Highway 81 to its

intersection with Interstate Highway 78; then northeasterly along Interstate Highway 78 to its intersection with PA Highway 61; then southerly along PA Highway 61 to its intersection with U.S. Highway 222; then southwesterly along U.S. Highway 222 to its intersection with U.S. Highway 30; then southwesterly along U.S. Highway 30 to the eastern bank of the Susquehanna River; then northerly along the eastern bank of the Susquehanna River to Interstate Highway 81.

This area is within easily understood boundary lines and includes the premises in Lancaster County where the disease has been found and provides at least a five mile buffer zone in every direction. It is necessary to prohibit the movement of articles from the areas in the quarantined area in order to adequately protect against spread of the disease.

The interim rule designates the following articles as prohibited articles:

- (1) Live poultry,
- (2) Eggs from poultry,
- (3) Poultry carcasses or parts thereof,
- (4) Manure from poultry, and
- (5) Used poultry litter.

The interim rule provides that prohibited articles are prohibited from moving interstate from a quarantined area.

The Department is considering whether the interim rule can be amended to allow the interstate movement of the articles designated as prohibited articles without a significant risk of spread of highly pathogenic avian influenza. When it is determined that the regulations can safely be made less restrictive without danger of the spread of highly pathogenic avian influenza, the regulations will be so amended.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is necessary to help prevent the interstate spread of highly pathogenic avian influenza.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required will address the issues required in section 604 of the Regulatory Flexibility Act.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

Under the circumstances referred to above 9 CFR Part 81 is revised to read as follows:

PART 81—HIGHLY PATHOGENIC AVIAN INFLUENZA AND SIMILAR POULTRY DISEASES

Sec.

81.1 Definitions.

81.2 Interstate transportation of affected or exposed live poultry or materials prohibited.

81.3 Infected cars, premises, containers, and other accessories; not to be used for interstate movement of healthy animals until cleaned and disinfected.

81.4 Prohibited articles and quarantined areas.

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4-8, 23 Stat. 31-33, as amended; secs. 1-3, 32 Stat. 791, 792 as amended; secs. 1-4, 33 Stat. 1264, 1265; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 3 and 11, 76 Stat. 130 and 132; 21 U.S.C. 111-113, 114a-1, 115-117, 119-126, 130, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 81.1 Definition

Highly pathogenic avian influenza. A disease of poultry caused by any highly pathogenic influenza virus that results in not less than 75 percent mortality within 8 days in at least 8 healthy susceptible chickens, 4-8 weeks old, inoculated by the intramuscular, intravenous, or caudal air sac route with bacteria-free infectious allantoic or cell culture fluids and using standard operating procedures to assure specificity.

§ 81.2 Interstate transportation of affected or exposed live poultry or materials prohibited.

No live chickens, turkeys, or geese affected with or directly exposed to the contagious disease known as highly pathogenic avian influenza or other similar contagious poultry disease, and no carcasses of such animals which have died from any such disease, or manure or litter from such diseased animals, shall be shipped, transported, or moved from one State or the District of Columbia into another State or the District of Columbia.

§ 81.3 Infected cars, premises, containers, and other accessories; not to be used for interstate movement of healthy animals until cleaned and disinfected.

No cars or premises which have contained shipments of any of the animals named in § 81.2 which have been found infected with highly pathogenic avian influenza or other similar contagious poultry disease, and no coops, containers, troughs, or other accessories used in the handling of such infected animals, shall be used in connection with the interstate movement of healthy animals of the same kind until the said cars, premises, coops, containers, troughs, or other accessories have been cleaned and disinfected under the supervision of the Veterinary Services unit of the Animal and Plant Health Inspection Service of the United States Department of Agriculture with a permitted disinfectant, as provided in §§ 71.4, 71.6, 71.7, 71.10, and 71.11 of this subchapter,

with a 3 percent solution cresol compound, U.S.P.

§ 81.4 Prohibited articles and quarantined areas.

(a) The following area in Pennsylvania is designated as a quarantined area: That portion of Pennsylvania beginning at the eastern bank of the Susquehanna River at Interstate Highway 81; then northeasterly along Interstate Highway 81 to its intersection with Interstate Highway 78; then northeasterly along Interstate Highway 78 to its intersection with PA Highway 61; then southerly along PA Highway 61 to its intersection with U.S. Highway 222; then southwesterly along U.S. Highway 222 to its intersection with U.S. Highway 30; then southwesterly along U.S. Highway 30 to the eastern bank of the Susquehanna River; then northerly along the eastern bank of the Susquehanna River to Interstate Highway 81.

(b) The following articles are designated as prohibited articles:

- (1) Live poultry.
- (2) Eggs from poultry.
- (3) Poultry carcasses or parts thereof.
- (4) Manure from poultry, and
- (5) Used poultry litter.

(c) No prohibited article shall be shipped, transported, or moved from a quarantined area to another state or the District of Columbia.

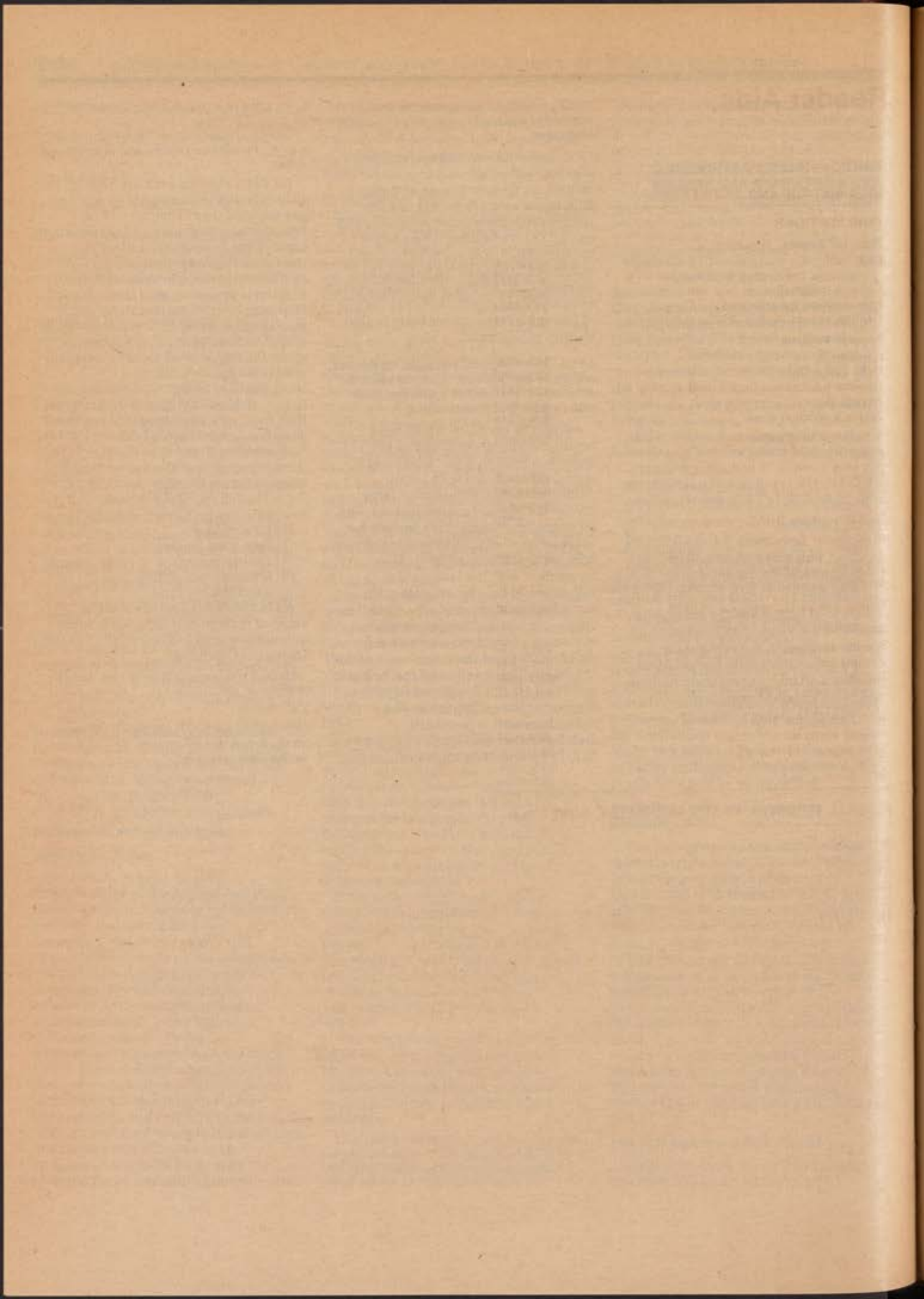
Done at Washington, D.C. this 4th day of November, 1983.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 83-30376 Filed 11-7-83; 11:10 am]

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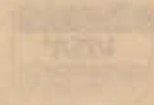
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S.J. Res. 121 / Pub. L. 98-145

To designate November 1983 as National Diabetes Month. (Nov. 3, 1983; 97 Stat. 918) Price: \$1.50

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