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federal register

Wednesday
November 30, 1983

Selected Subjects

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Federal Home Loan Bank Board
Securities and Exchange Commission

Banks, Banking
Farm Credit Administration

Color Additives
Food and Drug Administration

Computer Technology
General Services Administration

Conflict of Interests
Tennessee Valley Authority

Continental Shelf
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Crop Insurance
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Endangered and Threatened Species
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Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 5131 of November 28, 1983

National Decade of Disabled Persons

By the President of the United States of America

A Proclamation

During the 1981 International Year and the 1982 National Year of Disabled Persons, we learned about the many accomplishments of disabled persons, both young and old. We also gained vast new insights into the significant impact that access to education, rehabilitation, and employment have on their lives.

The progress we have made is a tribute to the courage and determination of our disabled people, to innovative research and development both in technology and training techniques to assist the disabled, and to those—whether in the private or public sectors—who have given so generously of their time and energies to help enrich the lives of disabled persons.

We must encourage the provision of rehabilitation and other comprehensive services oriented toward independence within the context of family and community. For only through opportunities to use the full range of their potential will our disabled citizens attain the independence and dignity that are their due.

In furtherance of the initiatives encouraged by observance of the International Year of Disabled Persons, the United Nations General Assembly has proclaimed the years 1983 through 1992 as the United Nations Decade of Disabled Persons. The Congress of the United States, by House Concurrent Resolution 39, has requested the President to take all steps within his authority to implement, within the United States, the objectives of the United Nations Decade of Disabled Persons as proclaimed by the United Nations General Assembly on December 3, 1982.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the years 1983 through 1992 as the National Decade of Disabled Persons. I call upon all Americans in both the private and public sectors to join our continuing efforts to assist disabled people and to continue the progress made over the past two years.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth 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. 83-32208
Filed 11-29-83; 10:48 am]
Billing code 3195-01-M

Editorial Note: For the President's remarks of Nov. 28, 1983, on signing Proclamation 5131, see the *Weekly Compilation of Presidential Documents* (vol. 19, no. 48).

Presidential Documents

Proclamation 5132 of November 28, 1983

National Home Care Week, 1983

By the President of the United States of America

A Proclamation

Health care in the home is as old as medical treatment itself. Today it presents Americans with important new opportunities. As an integrated part of our health care system, the home setting can offer the comfort of familiar surroundings and the flexibility of personalized treatment. It can preserve the dignity and independence of individuals and prevent or postpone institutionalization for millions of patients each year. In a significant number of cases, home care can even reduce the cost of medical treatment.

America's home health care system has been growing rapidly in recent years with more than 4,000 certified agencies now providing home care. As our elderly population grows, home health care promises to become even more important in the future. There is still much to be learned about home health care, including when it can be most beneficial, how it can make our health care system more efficient, and how it can reinforce the efforts of millions of American families who provide care for their own members. The Federal government, the States, and the private sector are vigorously pursuing the knowledge that will let us make the best use of this promising resource.

In recognition of the benefits to be derived from home health care services through home health agencies providing skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, and home health aide services, and the many private and charitable organizations which also provide these services, the Congress, by Senate Joint Resolution 122, has designated the week of November 27, 1983, through December 3, 1983, as "National Home Care 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 27, 1983, as "National Home Care Week." 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 28th. 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. 83-32209
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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Individual Yield Coverage Plan (IYCP) Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new subpart in Part 400, Chapter IV, Title 7 of the Code of Federal Regulations, effective with the 1983 and succeeding crop years, prescribing procedures for the implementation of an Individual Yield Coverage Plan of insurance on certain crops to be known as Subpart B, 7 CFR Part 400, General Administrative Regulations—Individual Yield Coverage Plan (IYCP). The intended effect of this rule is to confirm the interim rule on these regulations, as amended by this document to include minor changes to language and format for the purpose of clarification and to add a new subsection to codify the Office of Management and Budget (OBM) control numbers assigned to information collection requirements of these regulations.

EFFECTIVE DATE: November 30, 1983.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: On Monday, November 15, 1982, FCIC published an interim rule, effective upon publication for the 1983 and succeeding crop years, prescribing procedures for the implementation of an Individual Yield Coverage Plan (IYCP) at 47 FR 51345.

The public was given 60 days in which to submit written comments, data, and opinions, but none were received.

Since the publication of these regulations the Office of Management and Budget (OMB) has directed that OMB control numbers assigned under the Paperwork Reduction Act to any information collection requirements within any regulations should be codified in the Code of Federal Regulations (CFR). The OMB control numbers assigned to information collection requirements contained in the IYCP Regulations are found at 7 CFR § 400.21.

Other changes, determined by FCIC to be necessary to clarify certain provisions within these regulations provide for additional crops to be covered under IYCP effective for the 1984 and succeeding crop years, define yield when land is added to an established unit, and make minor grammatical and stylistic changes for purposes of clarification. The major changes are as follows:

1. Provide for IYCP coverage on Cotton, Dry Beans, Flax, Rice, Rye, and Sunflowers, effective for the 1984 and succeeding crop years.

2. Provide that any cropland, defined as "new ground acreage" by the actuarial table, will not be eligible for IYCP. This has the effect of excluding "new ground acreage" from the program. FCIC does not want to encourage bringing "new ground acreage" which may be highly erodable and a poor conservation practice into production. This change is found at § 400.15

3. Clarify the definition of "Appraised Yield" and "Base Period" found at § 400.16(a).

4. Provide that the producer must request IYC coverage and provide records of planted acreage at least 15 days prior to the acreage reporting date. This is more liberal than the previous requirement of submission 15 days before the sales closing date. This change is found in the second sentence of § 400.17.

5. Change the last sentence in § 400.17 to provide that the yield index shall be applied to the Area Average Yield for the base period instead of to the Statistical Reporting Service (SRS) yields for those years when the producer does not have acceptable records. This is a slight change in the formula applied by the Agricultural Stabilization and Conservation Service (ASCS) Office when determining the relationship of the producers recorded yields to the SRS yields for the same years.

6. Delete § 400.19 (d) and (e) and replace those provisions with a clearer explanation of IYCP average yield for land without satisfactory records being added to a unit with satisfactory records.

7. Delete § 400.19(g) and replace it with a more clearly written provision which does not change the intent or meaning of the use of ASCS certification in calculating IYCP average yields.

8. A new subsection is added to the rule to provide for the codification of OMB control numbers assigned to the information collection requirements of these regulations to be known as "§ 400.21 OMB control numbers."

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). It has been determined that this action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of such regulations. The sunset review date established for these regulations is September 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined in Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in Executive Order No. 12372 (July 14, 1982), was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no

Regulatory Impact Statement was prepared.

The IYCP program is currently available on Corn, Grain Sorghum, Oats, Wheat, Barley, and Soybeans. FCIC has determined that, effective for the 1984 and succeeding crop years, IYCP coverage will be extended to cover Cotton, Dry Beans, Flax, Rice, Rye, and Sunflowers.

List of Subjects in 7 CFR Part 400, Subpart B

Crop insurance, Individual Yield Coverage Plan.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises Subpart B in 7 CFR Part 400 of Federal Regulations, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart B—Individual Yield Coverage Plan Regulations for the 1983 and Succeeding Crop Years

Sec.

400.15 Availability of Individual Yield Coverage Plan.
400.16 Definitions.
400.17 Yield certification and acceptability.
400.18 Responsibilities.
400.19 Qualifications for Individual Yield Coverage Plan.
400.20 Modifications through individual certification of yield (Individual Certified Yield Plan—ICYP).
400.21 OMB control numbers.

Authority: Sec. 508, Pub. L. 75-450, 52 Stat. 73, as amended (7 U.S.C. 1508).

Subpart B—Individual Yield Coverage Plan Regulations for the 1983 and Succeeding Crop Years

§ 400.15 Availability of Individual Yield Coverage Plan.

Individual Yield Coverage Plan (IYCP) shall be offered under the provisions contained in 7 CFR Parts 402 through 499 within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops and in those areas where the actuarial table provides that IYCP is available. Cropland acreage, which is defined as "new ground acreage" by the actuarial table or by the policy will not be eligible for IYCP. All provisions of the applicable standard insurance contract for the crop apply, except those provisions which are in conflict with this subpart.

§ 400.16 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions, for the purposes of Individual Yield Coverage Plan are applicable:

(a) "Appraised Yield" is determined for each crop year where production records are not available for establishing the recorded yield, by multiplying the Area Average Yield by the insured's yield index, except that such appraised yield cannot exceed the recorded yield for any crop year.

(b) "Area Average Yield" is the average yield determined by FCIC upon which the guarantee is based for the insured crop, area, type, and practice, and is the average for the area over the base period. It is contained in the actuarial table.

(c) "Area Coverage Plan" is the coverage and rate assigned by the FCIC Actuarial Division for homogeneous areas and producers.

(d) "Base Period" means the 10-year period immediately preceding the crop year for which the yield is to be established.

(e) "Individual Yield Certification" is the appraised result of the examination of the insured's records of planted acreage and production certified by the county Agricultural Stabilization and Conservation Service (ASCS) office.

(f) "IYCP Average Yield" is a computation based on the average of the recorded and appraised yields for a 10-year period. A minimum of the 3 most recent years recorded yields is required unless the insured proceeds under 7 CFR 400.20. The insured is required to use available recorded yields if in excess of the three most recent years if continuous.

(g) "IYCP" is the Individual Yield Coverage Plan.

(h) "ICYP" is the Individual Certified Yield Plan within IYCP. (7 CFR 400.20).

(i) "Recorded Yield" is the yield that is based on the producer's records of planted acreage and production certified by ASCS.

(j) "SRS Yield" is production information derived by the Statistical Reporting Service on a county, crop, and practice basis as may be modified by FCIC for factors necessary to conform to sound actuarial practice.

(k) "Yield Index" is the result obtained by dividing the total recorded yields for the years SRS yields are available by the total SRS yield for those years.

§ 400.17 Yield certification and acceptability.

The insured shall initiate the request for individual yield certification and shall provide records of acreage and production to the county ASCS office for this purpose. The request and records must be submitted at least 15 days prior to the acreage reporting date for the crop in the county. The ASCS office will examine the insured's records and, if acceptable, record the actual yield obtained from the records, determine the relationship of such yields to the SRS yields for the same years, and apply the yield index to the area average yield for those years for which the producer does not have acceptable records. The ASCS office will complete the individual yield certification form.

§ 400.18 Responsibilities.

(a) The insured is solely responsible for the timely submission of the individual yield certification to the service office after its completion by the ASCS office.

(b) The service office is responsible for the explanation of the Individual Yield Coverage Plan (IYCP) to the insured, and upon receipt of the individual yield certification form is responsible for determining that the form is completed correctly.

§ 400.19 Qualifications for Individual Yield Coverage Plan.

Insured may elect to substitute the IYCP Yield for the Area Average Yield.

(a) For the producer to qualify for IYCP for any crop year, the completed individual yield certification form must be received in the Crop Insurance Service office not later than the acreage reporting date for the crop and the year.

(b) For a crop to qualify for IYCP, a minimum of 3 years of records of planted acreage and production, under the control of either the landlord or tenant, must be provided to ASCS for all units and be certified byASCS. Records for up to 10 continuous years shall be used where such records are available and the same farming practices are followed for that period of time. There can be no break in continuity from the most recent crop year through preceding crop years. A year in which no acreage was planted to the crop on the unit or in which a different practice was followed will not be considered a break in continuity.

(c) Either the landlord's or tenant operator's records may qualify either party for the same IYCP guarantee. If a conflict exists between the records of the landlord and the tenant operator, the Corporation will determine which records will be used.

(d) If the IYCP yield being requested is for an ASCS program crop and if the added land has an ASCS program yield

for that crop of 90 percent or more of the ASCS program yield of the unit to which the land is to be added or of the nearest unit than: when land without satisfactory records is added to a unit with satisfactory records, the IYCP average yield will be that of the unit to which the land was added; and when land without satisfactory records is added as a separate unit, the IYCP average yield will be that of the closest unit of the same crop and practice. When the ASCS program yields on the added land are less than 90 percent of the program yields on the existing units the IYCP yields will be determined by FCIC.

(e) When the yield being requested is for a crop for which the added land does not have an ASCS program yield, the ASCS program yield for the crop with the largest ASCS base acreage on the added land will be compared to determine if the 90 percent ratio is achieved. If the land is being added to a unit and there is no ASCS program yield on either the added land or the units or both to compare, the IYCP yield will be determined by FCIC. If the land is being added as a separate unit, and the nearest unit has no ASCS program yield to compare to the added unit, the next nearest unit will be used. If no comparable yields are available on any unit, the yield of the added unit will be determined by FCIC.

(f) If a producer disposes of his entire operation and begins operation on completely different units, the new units will be compared to the old units in accordance with paragraphs (d) and (e) of this section for adding new units.

(g) When land is being added upon which less than 3 continuous years of acceptable records are available, the acceptable production and acreage records will be used for the years they are available and paragraphs (d) and (e) of this section will be used for the years when adequate records are not available.

(h) When participation in IYCP is continuous, ASCS certification under this part for up to 10 years will be used in calculating the IYCP average yield. When an insured has previously participated in IYCP he must have at least the most recent three years records of production acceptable to ASCS. These records and all records previously certified by ASCS up to 10 years, will be used to ascertain the new yield.

(i) The premium shall be contained in the actuarial table and will be the same as applicable under the Area Coverage Plan.

§ 400.20 Modifications through individual certification of yield (Individual Certified Yield Plan—ICYP).

(a) In addition to the provisions contained in §§ 400.15, through 400.19 of this Part, producers who customarily feed crop production to livestock or poultry, and who are unable to provide adequate records sufficient to become eligible for the IYCP Plan, will be considered for eligibility for the Individual Certified Yield Plan (ICYP) in certain counties, as announced by the Manager, FCIC.

(b) To qualify for this plan, producers must agree to the conditions contained herein and provide information to the county ASCS office including but not limited to, the following:

(1) Satisfactory acreage and yield records for at least the most recent crop year.

(2) Acreage and yield records for the prior crop years even though such records may be imcomplete.

(3) Feeding records, fertilization and liming records, soil conservation methods used, land tillage practices, insecticide and herbicide records, planting pattern and population data, and equipment adequacy information as available.

(4) Certification of acreage and yield data for the previous 2nd and 3rd years when written records are unavailable.

(5) Agreement to disregard to the extent required by FCIC any unit division guideline provisions of the crop insurance policy.

(6) Records of acreage and yield for each future year that the insurance is in force. (Failure to provide such records in accordance with the provision of §§ 400.17 and 400.19 will result in insurance being based on the area coverage plan.)

(7) Agreement to convert to the IYC Plan for determining yields as soon as 3 consecutive years acreage and yield records are available.

(8) Producer certified yields will be reviewed by FCIC and may be adjusted by the Corporation prior to the final yield determination by ASCS.

(9) The producer may request FCIC to assist in establishing satisfactory acreage and yield information through field appraisals of potential production, bin measurements, etc. FCIC will determine if any evidence offered by the producer is relevant to the determination of yield on the unit.

(10) The producer must request the certified yield plan in accordance with the provisions of §§ 400.17 and 400.19 from the county ASCS office.

(11) The premium per acre shall be the production guarantee per acre under this plan times the applicable price election, times the applicable premium rate for the crop insured, times any applicable premium adjustment factor.

§ 400.21 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 400) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

Done in Washington, D.C., on September 12, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Date: November 21, 1983.

[FR Doc. 83-32016 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 6, Amdt. 26]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum size requirement applicable to fresh domestic shipments of Dancy tangerines from 2 5/16 inches to 2 1/16 inches in diameter during the period November 28, 1983 to August 19, 1984. This action allows an increase in the supply of tangerines in recognition of demand conditions and the size composition of available supply in the interest of growers and consumers.

EFFECTIVE DATE: November 28, 1983.

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

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon recommendations and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida Dancy tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

This amendment would relax limitations on the handling of Dancy tangerines by permitting each handler, during the period November 28, 1983—August 19, 1984 to ship 210 size (2 $\frac{9}{16}$ inches) Dancy tangerines. The regulation provides for the resumption of the 2 $\frac{9}{16}$ inch minimum size for Dancy tangerines on and after August 20, 1984.

The committee reports that Dancy tangerines continue to be slow in passing Florida maturity tests. In addition, the total available supply of large sizes is less than anticipated. Thus, relaxation of the regulation is necessary to alow a greater portion of the available supply to reach the market throughout the marketing season.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the amendment at an open meeting. This amendment relieves restrictions on the handling of Florida Dancy tangerines. Handlers have been apprised of such provisions and the effective dates.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

Accordingly, the provisions of § 905.306 are amended by revising the following entry in Table I, paragraph (a), applicable to domestic shipments, to read as follows:

§ 905.306 Oranges, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	
Tangerines	11/28/83–8/19/84.	U.S. No. 1	2 $\frac{1}{16}$
Dancy	On and after 8/20/84.	U.S. No. 1	2 $\frac{9}{16}$
* * *	* * *	* * *	

* * * * *

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

Dated: November 23, 1983.

Russell L. Hawes,

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

[FR Doc. 83-31977 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 580, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: This regulation increases the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 18–24, 1983. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: The amendment is effective for the period November 18–24, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1983–84. The committee met by telephone on November 22, 1983, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is improving

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the Act. This amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. § 907.880 (48 FR 51679) is revised to read as follows:

§ 907.880 Navel Orange Regulation 580.

(a) District 1: 736,000 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: 64,000 cartons;

(d) District 4: Unlimited cartons.

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

Dated: November 23, 1983.

Russell L. Hawes,

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

[FR Doc. 83-31978 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 331, Amdt. 1]

Lemons Grown in California and Arizona; Amendment of Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the minimum size requirement applicable to fresh domestic shipments of lemons from 1.82 inches to 2.01 inches in diameter during the period November 30, 1983 through December 17, 1983. This action is designed to promote orderly marketing of suitable sizes of fresh California-Arizona lemons in the interest of growers and consumers.

EFFECTIVE DATE: November 30, 1983 through December 17, 1983.

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

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under Marketing Order No. 910, as amended, (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon recommendations and information submitted by the Lemon Administrative Committee, and upon available information. It is hereby found that the regulation of California-Arizona lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

Shipments of lemons from the production area are now in progress, and such shipments are regulated under a continuing regulation (Lemon Regulation 331 (46 FR 53393)). Such regulation provides that shipments of lemons be no smaller than 1.82 inches in diameter.

The Committee reports that the present market for lemons is extremely weak due to recent heavy shipments of small sizes and choice quality lemons. The volume and size composition of the lemon crop in California and Arizona is such that ample supplies of the more desirable sizes are available to satisfy the demand in domestic fresh markets. The committee estimates that approximately 3-4 percent of the 1983-84 crop consists of sizes 1.82 inches in diameter and smaller. Smaller size lemons normally have negligible demand and sales opportunity, as they have relatively low juice yields. Additionally, such small fruit would be costly to prepare commercially for the market place. Lemons failing to meet such minimum size could be shipped to fresh export markets, left on the trees to attain further growth, or utilized in processing.

It is anticipated that market demand conditions will improve during subsequent weeks. Hence, this action provides for the resumption of the less restrictive 1.82 inch minimum size for lemons on and after December 18, 1983.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the amendment at an open meeting. Handlers have been apprised of such provisions and the effective dates.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Therefore, § 910.631 is amended by adding a new paragraph (b) to read as follows (as so amended, § 910.631(b) expires December 17, 1983, and will not be published in the annual Code of Federal Regulations):

§ 910.631 Lemon regulation 331.

(a) * * *

(b) Notwithstanding the provisions of paragraph (a), during the period November 30, 1983 through December 17, 1983, no handler shall handle any lemons grown in District 1, District 2, or District 3 which are of a size smaller than 2.01 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the lemons in any type of container may measure smaller than 2.01 inches in diameter.

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

Dated: November 23, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-31979 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 83-120]

Highly Pathogenic Avian Influenza; Interim Rule

Correction

In FR Doc. 83-31234 beginning on page 52420 in the issue for Thursday, November 17, 1983, make the following change.

On page 52424, third column, in the Authority Citation, last line, "2.15" should read "2.51".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 500

[No. 83-617]

Delegations of Authority; Office of the Federal Savings and Loan Insurance Corporation

Dated: November 7, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board has increased its delegation of authority to the Office of the Federal Savings and Loan Insurance Corporation ("FSLIC") in connection with the handling of assets acquired by the FSLIC and the disposition of claims and judgments against the FSLIC arising out of the management of such assets. This action is intended to reduce the administrative burden of the Board and increase its staff's ability to process expeditiously routine matters for the benefit of the FSLIC.

EFFECTIVE DATE: November 9, 1983.

FOR FURTHER INFORMATION CONTACT: Scott Taylor, Associate Director, Office of the Federal Savings and Loan Insurance Corporation, Federal Home Loan Bank Board (202-377-6302), 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, as

operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has since 1975 delegated authority to the Director of the Office of the Federal Savings and Loan Insurance Corporation to manage the assets of the FSLIC and to dispose of claims and judgments against the FSLIC arising out of the management of such assets. The Board also delegated to the Director of that Office the power to authorize sales of assets with book value not exceeding $100,000, and to allow a Deputy Director or other designated official of that Office to sell such assets with book value not exceeding $80,000. Monthly reports of sales of assets involving book losses exceeding $50,000, executed under the delegated authority, have been submitted to the Board. 12 CFR 500.40 (1983).

The precise language of the delegation authority and the specific dollar limits have not been revised since 1975, and are increasingly restrictive in light of the rise in real estate prices reflected in the mortgage assets held by the FSLIC and the volume of assets under management since that time. In order to reduce the time required to be spent by the Board in reviewing and acting upon recommended sales of assets of a routine or minor nature, and to enhance the ability of the Board's staff to arrange such sales for the maximum benefit of the FSLIC, the Board has determined to revise § 500.40 by delegating further authority to the Director of the Office of the Federal Savings and Loan Insurance Corporation in connection with the sale of assets. In addition, the Board has clarified the previous regulatory language, removed a redundant reference to "Acting Director," and has codified its definition of "book value", which, for purposes of applying the delegated authority, means net realizable market value at the date of acquisition and does not include the amount of any accrued but unpaid interest, fees, penalties, or similar items attaching to the assets.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12, 508.13, and delay of the effective date prescribed by 5 U.S.C. 553(d) and 12 CFR 508.14, is not necessary because the changes concern a matter of internal agency management.

List of Subjects in 12 CFR Part 500

Administrative practice and procedure, Federal Home Loan Bank Board.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 500, Subchapter A, Chapter V of Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

Revise § 500.40 as follows:

§ 500.40 Director of the Office of the Federal Savings and Loan Insurance Corporation.

(a) The Director of the Office of the Federal Savings and Loan Insurance Corporation is authorized:

(1) To manage the assets of the Corporation, and to take such action or actions as, in the opinion of the Director, may be required for their management, subject to the limitations of this section or to such limitations as the Board may impose by regulation, resolution, or other action;

(2) To satisfy, settle, pay, or compromise any liability of or claim or judgment against the Corporation arising out of the acquisition, management, or sale of any asset referred to in paragraph (a)(1) of this section, subject to such limitations as the Board may impose by regulation, resolution, or other action;

(3) To sell or authorize the sale or other disposition of any asset of the Corporation if the loss resulting from such disposition, calculated according to the book value of such asset, does not exceed the larger of (i) $500,000 or (ii) 20 percent of such book value; and

(4) To further delegate in writing the authority set forth in paragraphs (a)(1)–(3) of this section to any other officer or employee of the Office of the Federal Savings and Loan Insurance Corporation: *Provided*, that disposition of an asset pursuant to authority delegated under this paragraph (a)(4) may not result in a loss, calculated according to the book value of such asset, exceeding $200,000.

(b) The Director shall report monthly to the Board any action taken pursuant to an authorization contained in paragraph (a)(3) of this section that involves a loss in excess of $250,000.

(c) For purposes of this section, the "book value" of an asset means the net realizable market value of the asset as of the date it is acquired by the Corporation, plus sums expended by the Corporation for rehabilitation, maintenance or repair of that asset, and shall not include the amount of any interest, fees, penalties, or similar items that may be due or have been accrued or capitalized.

(Sec. 17, 47 Stat. 736, as amended, 12 U.S.C. 1437; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071); Sec. 402, 48 Stat. 1256–57, as amended (12 U.S.C. 1725 (1982))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-32007 Filed 11-29-83; 8:45 am]

BILLING CODE 6720-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board ("Federal Board"), adopts and publishes this final regulation as part of Title 12, *Code of Federal Regulations*, Chapter VI. The regulation amends existing rules in order to expand the types of differential interest rate programs that may be offered by Farm Credit System ("System") banks or associations with FCA approval. Upon effectiveness, differential interest rate programs may be based on operating and funding costs reasonably associated with different portions of the banks' or associations' loan portfolios or on such other factors as approved by FCA. System banks and associations will be able to associate the cost of funds and operating expenses more equitably to existing lending programs.

EFFECTIVE DATE: Thirty days from this publication date provided either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT: Michael C. Salapka, Finance Division (202–755–4055), or Gary G. Griffith, Operations Management Section (202–755–5943), Farm Credit Administration, 490 L'Enfant Plaza East SW., Washington, D.C. 20578.

SUPPLEMENTARY INFORMATION: On June 6, 1983, FCA noticed and published for public comment a proposed amendment to 12 CFR Part 614 (48 FR 25210), specifically § 614.4321. The Federal Board considered each of the comments received on the proposed amendment and adopted this final regulation at its September 1983 meeting. Comments were received from commercial banks, System banks, two trade associations, and a university professor; the majority of responses favored adoption of the amended regulation. Those comments made in objection to the amendment in whole or in part, or which included

suggestions for changes, are discussed in detail below along with the response of the Federal Board.

Three commentators objected to authorizing Federal intermediate credit banks ("FICBs") to price loans to production credit associations ("PCAs") and other financing institutions ("OFIs") based on quality. (For more information on OFIs, see 12 CFR §§ 614.4540–614.4650). Two of these comments suggested that loan pricing to PCAs and OFIs should not consider risk as it relates to each loan made by a PCA or OFI because these institutions are required to repurchase a loan discounted to an FICB when such loan is in default. The Federal Board does not concur with the comments. For over 10 years, FCA has authorized different interest rate programs based on the type, purpose, amount, or quality of loans or any combination of these factors (*See* 37 FR 11424, June 27, 1972). The amended regulation expands this to permit such interest rate programs to be based on funding or operating costs or other factors approved by FCA. In any case, an FICB may properly consider quality as a pricing factor in connection with loans and discounts extended to PCAs and OFIs under a differential interest rate program. An agreement to repurchase loans in default does not protect the FICB against the risk of insolvency or failure of the PCA or OFI. The number of recent financial institution failures emphasizes the reality of this risk.

Two commentators focused on the requirement for FCA approval of bank differential interest rate programs. One suggested deleting the approval requirement in subsection (d) since § 614.4280 already requires FCA approval for bank interest rate policies. The other suggested adding "and association" to the FCA approval requirement in subsection (d) in order to reflect the fact that FCA approves PCA interest rate programs indirectly in its approval of bank guidelines for association programs. The Federal Board believes that the FCA approval requirement in the amended regulation is necessary to emphasize FCA approval of all bank interest rate programs, particularly in the case of differential interest rate programs. However, the Federal Board adopted the suggestion to include bank guidelines for association programs in the approval requirement.

Two parties commented on the potential effect of the amended regulation on young farmers. One commentator stated that it was inappropriate for one group to be singled out in establishing interest rate programs. The other party expressed concern that the regulation discriminates against young farmers in that they may be charged higher rates to cover the higher servicing and supervising costs of a young farmer loan. As stated above, System institutions have been authorized to have differential interest rate programs for over 10 years. In amending the regulation, the Federal Board decided the interests of young farmers should be taken into account in developing such interest rate programs. The Federal Board added to subsection (d) a requirement that bank boards consider the effects their interest rates will have on the achievement of district young farmer programs. Thus, the amendment is designed to encourage attention to the special credit needs of young farmers. The Federal Board agrees with the party's statement that the district boards must consider many factors in addition to achievement of young farmer program objectives and has amended the regulation to reflect this.

One party commented that the amendment destroys the basis upon which the System was established. The party stated that the System, from its inception, has provided loans to all borrowers on the same terms and conditions and argued that using differential interest rates based on the various factors permitted by the regulation is inconsistent with the concept that all borrowers should share equally in System financing opportunities. As mentioned above, the System's authority to use differential interest rates is not new but has been available under FCA Regulations for over 10 years. In passage of the Farm Credit Act of 1971 ("1971 Act") Congress directed the System to continue to furnish eligible agricultural borrowers with credit at the lowest reasonable cost under all money cost conditions. Congress recognized that this would include variable rates and different rates for different types of loans and credit risks. FCA promulgated regulations covering interest rate programs pursuant to this mandate. The amended regulation recognizes this authority and assures that System banks are able to provide the lowest cost credit to eligible borrowers based on operating, funding, and other factors approved by FCA.

One party expressed concern that an FICB would have to approve for OFIs any differential interest rate plan approved for PCAs. This is not correct. The requirement that FICBs must provide OFIs with the same differential interest rate programs they make available to PCAs only applies to the rates FICBs charge PCAs and OFIs. Both OFIs and PCAs must have equal access to differential interest rates charged by the district FICB. This requirement has no bearing upon FICB approval of PCA differential interest rates charged farmers, ranchers, and producers or harvesters of aquatic products. The authority of OFIs to implement differential interest rate programs is controlled by applicable state and Federal laws, not the 1971 Act.

The same commentator asked whether a FICB can charge different rates to categories of PCAs. The regulation permits such differential interest rates based on the enumerated factors. In such cases, the FICB would use the same differential classifications to make such rates available to OFIs on an equitable basis.

One commentator suggested amending the regulation to include interest rate limits in order to prevent unfair PCA competitive advantage. The party suggested that the ability to charge differential rates will allow PCAs to loan funds below cost in order to attract new customers. The Federal Board does not think such limits are necessary. The use of differential rates to "buy" new accounts or for other unfair competitive purposes is not a permissible basis for FCA approval of a bank differential interest rate program.

Finally, one party expressed concern that the amended regulation would allow new and existing borrowers to be charged different interest rates. The Federal Board agrees that such a program would be authorized. The Federal Board believes the primary purpose of the amendment is to better associate the costs of borrowing with current market conditions at the time of entry into interest rate cycles. The results may be lower or higher interest rates to new borrowers depending on the timing of their entry into the cycle.

List of Subjects in 12 CFR Part 614

Agriculture, Bank, banking, Credit, Rural areas.

PART 614—[AMENDED]

For the reasons set out in the preamble, Part 614 of Chapter VI, Title 12 of the *Code of Federal Regulations* is amended as shown.

Section 614.4321 is revised to read as follows:

Subpart G—Interest Rates and Charges

* * * * *

§ 614.4321 Interest rate programs.

The following types of interest rate programs may be employed by banks and production credit associations. Bank interest rate programs and bank guidelines for association interest rate programs subject to Farm Credit Administration approval.

(a) Fixed rates. The rate of interest specified in the note or loan document shall prevail as the maximum rate chargeable to the borrower during the period of the loan.

(b) Variable rates. The interest rate(s) on outstanding loan balances may be charged from time to time during the period of the loan, if appropriate provisions are made in the note or loan document.

(c) Fixed interest spread. Interest rates shall be expressed in terms of a percentage to be added to the cost of money to the bank or association.

(d) Differential rates. Differential interest rates may be established for loans based on type, purpose, amount, quality, funding or operating costs, any combination of these factors, or such other factors as may be approved by the Farm Credit Administration. Differential interest rate programs should achieve equitable rate treatment among categories of borrowers. In the adoption of differential interest rate programs, bank boards may consider, among other things, the effect that such interest rate structures will have on the achievement of district objectives relating to the special credit needs of young farmers. The Federal intermediate credit banks must provide other financing institutions with the same differential interest rate programs as they provide to production credit associations.

* * * * *

(Sec. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, 12 U.S.C. 2243, 2246, and 2252)

Donald E. Wilkinson,

Governor.

[FR Doc. 83-31957 Filed 11-29-83; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376, 379, and 399

[Docket No. 30909-186]

People's Republic of China; Export Control Policy; Placement in Country Group V

Correction

In FR Doc. 83-31638, beginning on page 53064 as "Part VI" in the issue of Wednesday, November 23, 1983, make the following corrections.

1. On page 53066, second column, paragraph "32." which amends § 376.8, the eighth line should have read: "S, W, Y or Z country, the People's".

2. On page 53067, first column, paragraph "40." should have read:

"§ 379.5 [Amended]

"40. Section 379.5 is amended by revising the phrase "Country Group Q, V, W, Y, or Z, or Afghanistan" to read "Country Group Q, W ², Y or Z, the People's Republic of China or Afghanistan" in paragraph (e)(1)(vii), and by revising the phrase "Country Group Q, W, Y, Z, or Afghanistan" to read "Country Group Q, W, Y or Z, the People's Republic of China or Afghanistan" in paragraph (e)(2) (two revisions)."

3. On page 53068, third column, paragraph "55." which amends Supplement No. 1 to § 399.1, in the sixth line, "$100" should have read "$250".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM80-73-000, et al. and RM80-74-000 et al.]

Delivery and Compression Allowances Under the Natural Gas Policy Act of 1978

Issued November 25, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing of final rule for purposes of further consideration.

SUMMARY: On September 24, 1983, the Federal Energy Regulatory Commission (Commission) issued a final rule establishing delivery and compression allowances under section 110 of Natural Gas Policy Act of 1978. The Commission received six applications to rehear the final rule. In order to allow the Commission sufficient time to consider those applications, the Commission is issuing this order granting rehearing solely for purposes of further consideration.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: Michael Stosser, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing for Purposes of Further Consideration

Issued November 25, 1983.

In the matter of delivery allowances under section 110 of the Natural Gas Policy Act of 1978, Docket Nos. RM80-73-004, 005, 006, 007, 008, 009; and gathering allowances under section 110 of the Natural Gas Policy Act of 1978, Docket Nos. RM80-74-004, 005, 006, 007, 008, 009.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 334, "Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule," (48 FR 44,495, Sept. 29, 1983) amending regulations under section 110 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432 (Supp. V 1981)). The amended regulations in Order No. 334 adopt and clarify the application of the allowances that may be collected by "first sellers," as defined by the NGPA, for delivering (gathering and transporting) and for compressing natural gas.

Applications for rehearing of Order No. 334 were filed on October 26, 1983, by Michigan Wisconsin Pipe Line Company; and on October 27, 1983, by Indicated Producers, Philips Petroleum, *et al.*; Tennessee Gas Pipeline Company, a Division of Tenneco; Associated Gas Distributors; Natural Gas Pipeline Company of America; and United Gas Pipe Line Company.

In order to have sufficient time to consider the applications for rehearing, the Commission grants rehearing of the applications solely for purposes of further consideration.

The Commission orders:

The applications for rehearing filed by the above-named groups are granted solely for purposes of further consideration. This action does not constitute a grant or denial of the applications on the merits in whole or in part. As provided in § 385.713(d) of the Commission's regulations, no answers to the applications will be entertained by the Commission because this order does not grant rehearing on any substantive issues.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-31951 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 271 and 274

[Docket No. RM83-3-001]

Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978

Issued November 25, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On September 27, 1983 the Federal Energy Regulatory Commission (Commission) issued Order No. 336, a final rule that amended Parts 271 and 274 of its regulations relating to filing requirements for well category determinations under the Natural Gas Policy Act of 1978 (NGPA).

In this order, the Commission grants rehearing of petitioner's request for purposes of further consideration.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rizzo, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

Order Granting Rehearing for Purposes of Further Consideration

Issued November 25, 1983.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336, "Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978; Regulations for Temporary Pressure Buildup Determination Under Section 108 of the Natural Gas Policy Act" (48 FR 44508, September 29, 1983) a final rule amending regulations relating to filing requirements for well category determinations under the NGPA.

The Commission has received a timely petition for rehearing of this final rule from Getty Oil Company (Docket No. RM83-3-001). To have sufficient time to consider the issues in this petition, the Commission will grant rehearing of the final rule solely for the purpose of such further consideration. This action does not constitute a grant or denial of any petition on its merits, either in whole or part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these petitions will be entertained by the Commission because this order does not grant rehearing on any substantive issue.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-31952 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1300

Statement of Employment and Financial Interests; Amendment and Annual Revision of Appendix

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of annual revision.

SUMMARY: TVA regulations require employees in certain positions to submit annual Statements of Employment and Financial Interests. Employees at TVA pay grades M-5, M-6, and M-7 who must file Statements of Employment and Financial Interests are identified and listed in an appendix to this regulation. A revised appendix is published annually in the **Federal Register**. This notice announces that annual revision.

EFFECTIVE DATE: The appendix is updated for the purpose of inclusion in the Code of Federal Regulations, and for that purpose is effective on November 30, 1983. The revisions became effective for individual employees upon receipt of actual notice.

ADDRESS: Relevant comments may be sent to the Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902, telephone 615-632-2241.

SUPPLEMENTARY INFORMATION: TVA's Code of Ethical Standards, in accordance with 16 U.S.C. 831-831dd (1982), implements the requirements of E.O. No. 11222 and has been previously published or referenced in the **Federal Register** as follows:

33 FR 19,168, December 24, 1968
34 FR 15,750, October 11, 1969
35 FR 13,364, August 21, 1970
36 FR 15,075, June 8, 1973
42 FR 2,668, January 13, 1977
42 FR 65,143, December 30, 1977
46 FR 30,682, July 9, 1982
48 FR 16,653, April 19, 1983

The list of positions at grades M-5, M-6, and M-7 for which Statements of Employment and Financial Interests are required to be filed is being revised. Those positions, described generally in paragraphs (2) and (3) of 18 CFR 1300.735-41(a), are specifically identified by organization, title, and pay grade in the appendix to the section. Changes in duties and responsibilities of specific positions, changes in organizational structures, or addition of new positions may create or remove the need for incumbents to submit statements under the general description contained in the section. Accordingly, subsection (b) provides for annual republication of the updated, revised appendix.

List of Subjects in 18 CFR Part 1300

Conflicts of interests.

§ 1300.735-41 [Amended]

The appendix to § 1300.735-41 is revised to read as follows:

Appendix

As provided in § 1300.735-41(b), employees in the following positions, which are described in § 1300.735-41(a) (2) and (3), must submit Statements of Employment and Financial Interests:

Office of the General Manager

Assistant to Manager, Office, grade M-7
District Administrator, grade M-7
Chief, Staff, grade M-5

Information Office

Chief, Citizen Action Office, grade M-7
Coordinator, grade M-7
Manager, Information Services, grade M-7
Assistant Chief, Citizen Action Office, grade M-6
Chief, Broadcast/Audiovisual Staff, grade M-6
Manager, Energy Education, grade M-6
Manager, Information Services, grade M-6
Manager, Media Relations, grade M-6
Chief, Employee Communications Staff, grade M-5
Manager, 50th Anniversary Barge Exhibit, grade M-5
Manager, Information Services, grade M-5
Manager, News Desk, grade M-5
Manager, Publication Services, grade M-5

Office of Audit and Evaluation

Assistant Chief, Branch, Auditing Branch, grade M-6
Assistant Chief, Branch, Corporate Industrial Engineering Branch, grade M-6
Assistant General Auditor, grade M-6
Audit Supervisor, External, grade M-6
Audit Supervisor, Internal, grade M-6
Senior Program Analyst, grade M-6
Supervisor, Program Evaluations Section, grade M-6
Industrial Engineer, grade M-5
Program Analyst, grade M-5
Supervisor, Section, grade M-5 (All)

Office of Coal Gasification

Chief, Branch, grade M-7
Chief, Staff, grade M-7
Assistant to the Program Manager, grade M-6
Chemical Engineer, grade M-6
Chief, Business Staff, grade M-6
Chief, Operations Staff, grade M-6
Head, Construction and Scheduling Group, grade M-6

Supervisor, Technical Services Staff, grade M–6
Mechanical Engineer, grade M–5
Project Staff Engineer, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Configuration Management Staff, grade M–5

Office of Quality Assurance

Head, Group, grade M–6 (All)
Head, Group, Facility and Construction Services Programs Group, grade M–5
Quality Assurance Specialist, grade M–5
Supervisor, Section, grade M–5 (All)

Division of Finance

Chief, Branch, Central Accounting Branch, grade M–7
Treasurer, grade M–7
Assistant Chief, Branch, Chemical Accounting Branch, grade M–6
Assistant Chief, Branch, Retirement Services Branch, grade M–6
Supervisor, Accounting Services, grade M–6
Supervisor, Accounting Section, grade M–5
Supervisor, Accounting Quality Assurance Section, grade M–5
Supervisor, Accounts Payable Section, grade M–5
Supervisor, Benefits Section ,grade M–5
Supervisor, Cash Management Section, grade M–5
Supervisor, Payroll Section, grade M–5

Labor Relations Staff

Assistant to Director of Labor Relations, grade M–7
Chief, Salary Policy Contract Administration, grade M–7
Assistance Chief, Salary Policy Contract Administration, grade M–6
Assistant Chief, Trades and Labor Contract Administration, grade M–6

Division of Occupational Health and Safety

Assistant to the Director of Occupational Health and Safety, grade M–7
Chief, Branch, grade M–7
Chief, Branch, Technical Support Branch, grade M–6
Supervisor, Section, grade M–6 (All)
Hazard Control Engineer, grade M–5
Industrial Hygienist, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Staff, Data Analysis Staff, grade M–5
Team Leader, grade M–5

Division of Medical Services

Chief, Area Medical Service, grade P–4
Chief, Branch, grade M–7
Medical Administrator, grade M–7
Assistant Medical Administrator, grade M–6
Assistant Chief, Staff, Technical Project Unit, grade M–5
Chief of Nursing, grade M–5
Personnel Officer, grade M–5
Psychologist, grade M–5
Supervisor, Section, Systems and Data Processing Section, grade M–5

Division of Management Systems

Chief, Branch, ADP Policy, Planning, and Requisition Branch, grade M–7
Assistant Chief, Branch, ADP Policy, Planning, and Requisition Branch, grade M–6
Chief, Staff, Management Services Staff, grade M–6
ADP Planning Specialist, grade M–5
Supervisor, Section, ADP Requisition Section, grade M–5
Supervisor, Section, Computing Services Planning Section, grade M–5

Division of Personnel

Chief, Branch, grade M–7
Supervisor, Administrative Services, grade M–5

Division of Property and Services

Assistant to Director of Property and Services, grade M–7
Chief, Branch, grade M–7
Title Attorney, grade M–7
Assistant Chief, Land Branch, grade M–6
Coordinator, Office Service Branch, grade M–6
Librarian, grade M–6
Supervisor, Section, grade M–6 (All)
Supervisor, Services, Reprographics and Record Services Group, grade M–6
Airplane Pilot, grade M–5
Assistant to Chief, Office Service Branch, grade M–5
Building Management Specialist, grade M–5
Chief, Services, Management Services, grade M–5
District Manager, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Services, Reproduction and Word Processing Section, grade M–5
Supervisor, Unit, grade M–5 (All)

Public Safety Service

Assistant to the Chief, grade M–6
Supervisor, Management Services Staff, grade M–6
Supervisor, Nuclear Operations Section, grade M–5
Supervisor, Personnel and Budget Section, grade M–5

Division of Purchasing

Assistant to the Director of Purchasing, grade M–7
Chief, Branch, grade M–7
Chief, Staff, Procurement Support Staff, grade M–7
Assistant Chief, Branch, grade M–6
Chief, Staff, grade M–6
Procurement Analyst, grade M–5
Purchasing Agent, grade M–5
Supervisor, Section, grade M–5 (All)

Office of the General Counsel

Attorney (Natural Resources Development), grade M–7
Attorney (Nuclear Regulatory and Environmental Laws and Regulations), grade M–7
Attorney (Procurement and Business), grade M–7
Attorney (Reservoir Properties, Permits), grade M–7
Attorney (Patents), grade M–6

Office of Agricultural and Chemical Development

Manager's Office

Assistant to the Manager of Agricultural and Chemical Development, grade M–7
Program Manager, grade M–7
Project Manager, grade M–7
Assistant to the Manager of Agricultural and Chemical Development, grade M–6
Assistant Program Manager, grade M–6
Chief, Staff, Budget and Cost Control Staff, grade M–6
Supervisor, Environmental Engineering Section, grade M–6
Personnel Officer, grade M–5
Supervisor, Safety Engineering Services, grade M–5

Division of Agricultural Development

Chief, Branch, grade M–7
Senior Scientist, grade M–7
Assistant Chief, Branch, grade M–6
Program Manager, grade M–6 (All)
Supervisor, Section, grade M–6 (All)
Agriculturist, grade M–5
Assistant to the Chief of Agricultural Research Branch, grade M–5
Assistant to Chief, Branch, Economics and Marketing Research Branch, grade M–5
Supervisor, Administrative Services, grade M–5

Division of Chemical Development

Chief, Branch, grade M–7
Project Manager, grade M–7
Assistant Chief, Design Branch, grade M–6
Assistant Project Manager, grade M–6
Chief, Services, Administrative Services, grade M–6
Electrical Engineer (Contract Administration), grade M–6
Mechanical Engineer (Contract Administration), grade M–6
Civil Engineer (Contract Administration), grade M–5
Mechanical Engineer (Contract Administration), grade M–5

Division of Chemical Operations

Chief, Branch, grade M–7
Assistant Chief, Branch, grade M–6
Chief, Administrative Services Staff, grade M–6

Office of Economic and Community Development

Assistant Director, Staff, Industrial Development Staff, grade M–7
Chief, Branch, grade M–7
Chief, Staff, Management Services Staff, grade M–7
Assistant Chief, Branch, grade M–6
Economist, grade M–6
Program Delivery Center Manager, grade M–6 (All)
Program Manager, grade M–6 (All)
Project Manager, grade M–6 (All)
Supervisor, Section, Skills Development Section, grade M–6
Supervisor, Unit, grade M–6 (All)
Chief, Staff, Budget and Financial Services Staff, grade M–5
Coordinator, grade M–5 (All)
Economist, grade M–5 (All)
Program Coordinator, grade M–5 (All)
Program Manager, grade M–5 (All)
Project Manager, grade M–5 (All)
Regional Planner, grade M–5 (All)
Supervisor, Section, grade M–5 (All)
Supervisor, Unit, grade M–5 (All)

Office of Engineering Design and Construction

Manager's Office

Project Staff Engineer, grade M-7 (All)
Project Manager, grade M-6
Supervisor, Section, Planning and Scheduling Section, grade M-6
Assistant Project Manager, grade M-5
Project Engineer, grade M-5
Supervisor, Field Office Inspection Unit, grade M-5

Division of Engineering Design

Chief, Branch, grade M-7
Civil Engineer, grade M-7 (All)
Civil Design Project Engineer, grade M-7
Electrical Design Project Engineer, grade M-7 (All)
Electrical Engineer, grade M-7 (All)
Mechanical Design Project Engineer, grade M-7 (All)
Mechanical Engineer, grade M-7 (All)
Project Manager, grade M-7 (All)
Architect, grade M-6 (All)
Assistant to the Chief, Branch, grade M-6 (All)
Assistant to Project Manager, Investment Recovery Project, grade M-6
Chief, Branch, grade M-6
Civil Design Project Engineer, grade M-6 (All)
Civil Engineer, grade M-6 (All)
Electrical Engineer, grade M-6 (All)
Head, Group, grade M-6
Mechanical Engineer, grade M-6 (All)
Nuclear Engineer, grade M-6
Planning and Project Engineer, grade M-6
Project Engineer, grade M-6 (All)
Quality Assurance Engineer, grade M-6
Civil Project Engineer, grade M-5
Electrical Project Engineer, grade M-5
Mechanical Project Engineer, grade M-5
Project Engineer, grade M-5
Supervisor, Section, grade M-5 (All)

Division of Construction

Chief, Management Services Branch, grade M-7
Construction Engineer, grade M-7 (All)
General Construction Superintendent, grade M-7 (All)
Site Manager, Hartsville Nuclear Plant, grade M-7
Assistant Construction Engineer, Hartsville Nuclear Plant, grade M-6
Chief, Project Management Services, grade M-6
Chief, Staff, grade M-6 (All)
General Construction Superintendent, grade M-6
Site Manager, grade M-6
Supervisor, Section, Equipment Management Section, grade M-6
Assistant General Construction Superintendent, grade M-5
General Construction Superintendent, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisior, Unit Warehouse Services Unit, grade M-5 (All)

Office of Natural Resources

Division of Air and Water Resources

Chief, Branch, grade M-7
Assistant to the Director, grade M-6
Supervisor, Section, Research Section, grade M-6

Division of Land and Forest Resources

Chief, Branch, grade M-7
Chief, Branch, grade M-6
Program Manager, grade M-6 (All)
Project Manager, grade M-6 (All)
Chief Archaeologist, grade M-5
Program Manager, grade M-5 (All)
Project Manager, grade M-5 (All)
Senior Terrestrial Ecologist, grade M-5
Senior Wetland Ecologist, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, Budget and Fiscal Services, grade M-5

Land Between The Lakes

Chief, Branch, grade M-6
Assistant Chief, Branch, Programs and Facilities Branch, grade M-5
Civil Engineer, grade M-5
General Foreman, grade M-5
Supervisor, Section, Forest and Open Land Management Section, grade M-5

Division of Natural Resource Operations

Assistant to the Director of Natural Resource Operations, grade M-7
Chief, Branch, grade M-7
Manager, Operations, grade M-7
Assistant Chief, Branch, grade M-6
Chief, Branch, Laboratory Branch grade M-6
Chief, Services, Administrative and Personnel Services, grade M-6
Program Manager, Geographic Information Services Branch, grade M-6
Supervisor, Operations, grade M-6 (All)
Civil Engineer, Data Services Branch, grade M-5
Coordinator, grade M-5 (All)
Instrument Engineer, Data Services Branch, grade M-5
Project Manager, grade M-5 (All)
Research Chemist, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, Administrative Services, grade M-5
Supervisor, Staff, grade M-5 (All)
Supervisor, Unit, Field Operations Eastern Area, grade M-5

Office of Power

Power Manager's Office and Staffs

Head, Group, Power System and Analysis Group, grade M-7
Head, Group, Program Planning Group, grade M-7
Assistant Chief, Management Services Staff, grade M-6
Power Planning Supervisor, grade M-6
Supervisor, Safety Engineering Services, grade M-6

Division of Energy Conservation and Rates

Chief, Branch, grade M-7
Chief, Staff, Planning and Communication Staff, grade M-7
Assistant to Chief, Branch, grade M-6
Supervisor, Section, grade M-6 (All)
Economist, grade M-5
Project Manager, grade M-5 (All)
Research Analyst, grade M-5
Staff Rate Assistant, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, Energy Conservation and Solar Training Section, grade M-5
Supervisor, Unit, grade M-5 (All)

Division of Energy Demonstrations and Technology

Chief, Branch, grade M-7
Chief, Staff, Planning and Budget Staff, grade M-7
Program Manager, grade M-6 (All)
Project Manager, AFBC Demonstration Plant Section, grade M-6
Supervisor, Section, grade M-6 (All)
Coordinator, Program Management and Project Engineering, grade M-5
Mechanical Engineer, grade M-5
Personnel Officer, grade M-5
Project Coordinator, Advanced Systems, grade M-5
Project Manager, grade M-5 (All)
Research Analyst, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, grade M-5 (All)

Energy Supply

Chief, Branch, grade M-7
Chief, Branch, grade M-6
Nuclear Engineer, grade M-6
Supervisor, Section, grade M-6 (All)
Health Physicist, grade M-5 (All)
Supervisor, Section, grade M-5 (All)

Division of Energy Use and Distributor Relations

Assistant to the Director, grade M-7
Chief, Branch, grade M-7
Chief, Staff, Analysis Staff, grade M-7
District Manager, grade M-7
Senior District Advisor, grade M-7
Assistant Chief, Branch, grade M-6
Assistant District Manager, grade M-6

Division of Fossil and Hydro Power

Assistant Chief, Branch, grade M-7
Chief, Branch, grade M-7
Superintendent, Hydro Operations, grade M-7
Head, Group, grade M-6 (All)
Power Plant Superintendent, Raccoon Mountain, grade M-6
Power Plant Superintendent, Wilson, grade M-6
Project Coordinator, Plant Equipment Branch, grade M-6
Supervisor, Industrial Safety and Fire Protection Engineering, grade M-6
Supervisor, Services, grade M-6 (All)
Power Plant Superintendent, grade M-5 (All)
Supervisor, Section, grade M-5 (All)

Division of Fuels

Chief, Branch, grade M-7
Chief, Staff, Special Projects Staff, grade M-7
Assistant Chief, Branch, grade M-6
Head, Group, grade M-6
Nuclear Engineer, grade M-6
Project Engineer, grade M-6
Project Manager, grade M-6
Fuels Engineer, grade M-5
Nuclear Engineer, grade M-5
Project Manager, grade M-5 (All)
Supervisor, Section, grade M-5 (All)
Supervisor, Staff, grade M-5 (All)
Supervisor, Administrative Services, grade M-5

Division of Nuclear Power

Assistant Chief, Branch, Field Services Branch, grade M-7
Chief, Branch, grade M-7

Head, Group, Bellefonte Field Services Group, grade M-7
Assistant Chief, Branch, grade M-6
Chemical Engineer, grade M-6
Chief, Staff, Quality Engineering Staff, grade M-6
Head, Group, grade M-6 (All)
Mechanical Engineer, grade M-6
Metallurgy Engineer, grade M-6
Nuclear Engineer, grade M-6
Supervisor, Staff, grade M-6 (All)

Operations Support

Assistant to the Chief, Engineering and Planning Support, grade M-7
Assistant Director, Project Management Corporation, grade M-7
Chief, Branch, grade M-7
Manager, Quality Assurance, Project Management Corporation, grade M-7
Superintendent, Power Service Shops, grade M-7
Assistant Superintendent, Service Shops, grade M-6
Chief, Branch, grade M-6
Chief, Services, Central Laboratories, grade M-6
Environmental Engineer, grade M-6
Head, Group, grade M-6
Supervisor, Section, grade M-6
Assistant to the Chief, Branch, grade M-5
Assistant Supervisor, Section, grade M-5
Environmental Engineer, grade M-5
Power Supply Engineer, grade M-5
Project Manager, grade M-5
Staff Engineer, grade M-5 (All)
Supervisor, Group, grade M-5
Supervisor, Measurement Laboratory, grade M-5
Supervisor, Section, grade M-5
Supervisor, Staff, grade M-5

Power System Operations

Chief, Branch, grade M-7
Supervisor, Section, grade M-5

Transmission System Engineering and Construction

Chief, Branch, grade M-7
Chief, Project Services, grade M-7
Assistant Chief, Branch, grade M-6
Chief, Branch, grade M-6
Electrical Engineer, grade M-6
General Construction Superintendent, grade M-5
Supervisor, Section, grade M-5 (All)

Dated: November 21, 1983.

W. F. Willis,

General Manager.

[FR Doc. 83-32006 Filed 11-29-83; 8:45 am]

BILLING CODE 6120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Blue No. 2; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Blue No. 2 for use in coloring food and ingested drugs until the date of the Commissioner's Final Decision on the permanent listing of this color additive. The agency is taking this action because it has decided to hold a formal public hearing to receive evidence that is relevant and material to the issue raised by an objection to the final rule that permanently listed this color additive for these uses. A notice of hearing was published in the **Federal Register** of November 7, 1983 (48 FR 51145). A postponement of the closing date is necessary to permit the continued use of FD&C Blue No. 2 until the agency makes a final decision on the objection.

DATES: Effective November 30, 1983, the closing date for FD&C Blue No. 2 is extended until the date of the Commissioner's Final Decision on permanent listing of this color additive.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 4, 1983 (48 FR 5252), FDA published a final rule that amended the color additive regulations by "permanently" listing FD&C Blue No. 2 under §§ 74.102 and 74.1102 (21 CFR 74.102 and 74.1102). The final rule also amended § 81.1(a) (21 CFR 81.1(a)) by removing FD&C Blue No. 2 from the provisional list of color additives and amended § 81.27(d) (21 CFR 81.27(d)) by removing FD&C Blue No. 2 from the conditions of provisional listing. Additionally, the final rule amended § 82.102 (21 CFR 82.102) for FD&C Blue No. 2 to conform the identity and specifications to the requirements of § 74.102(a) (1) and (b). In the same issue of the **Federal Register** (48 FR 5261), FDA published a final rule that postponed the closing date for the provisional listing of FD&C Blue No. 2 until April 29, 1983, to provide time for the receipt and evaluation of any objections submitted in response to the final listing regulation.

The agency received a letter that objected to the listing regulation and requested a hearing on the objection it presented. The letter is on file at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 83N-0009.

In the **Federal Register** of April 29, 1983 (48 FR 19364), FDA published a final rule that extended the closing date of the provisional listing of FD&C Blue No. 2 until July 1, 1983, to provide time for the agency to evaluate and to act on the objection it received. In the **Federal Register** of July 1, 1983 (48 FR 30358), and then again in the **Federal Register** of August 30, 1983 (48 FR 39221), the agency extended the closing date to provide additional time to complete its evaluation of the objection. In the latter notice, FDA established the current closing date of December 2, 1983, for the provisional listing of FD&C Blue No. 2.

FDA has decided to grant a formal public hearing to receive evidence that is relevant and material to the issue raised in the objection. The notice of hearing was published in the **Federal Register** of November 7, 1983 (48 FR 51145). The filing of the objection stayed the effectiveness of FDA's final rule permanently listing FD&C Blue No. 2 for use in coloring food and ingested drugs (21 U.S.C. 371(e)(2)). Therefore, to permit the continued use of this color additive pending final agency action on the objection, FDA is extending the closing date of the provisional listing of FD&C Blue No. 2 until final action on permanent listing. The agency has decided that such an extension (rather than one specifying a set closing date) is appropriate because it is not clear how long the hearing will last. FDA believes it would be a waste of agency resources to publish periodically short-term extensions during the course of the hearing. The agency has concluded that no harm to the public health will result from this extension.

Because of the short time until the December 2, 1983 closing date, FDA concludes that notice and public procedure on the amendments to the provisional listing regulations included herein are impracticable, and that good cause exists for issuing this postponement as a final rule.

To prevent any interruption in the provisional listing of FD&C Blue No. 2 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective on November 30, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Food, Drugs.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner

of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "FD&C Blue No. 2" in paragraph (a) to read "Date of Final Decision on Permanent Listing."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "FD&C Blue No. 2" in paragraph (d) to read "Date of Final Decision on Permanent Listing."

Effective date. This final rule shall be effective November 30, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: November 10, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-31960 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 175

[Docket No. 83F-0202]

Indirect Food Additives: Adhesive Coatings and Components; Adhesives

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,6-hexanediol adipic acid polyester as a component of adhesives for use in articles intended for use in contact with food. This action responds to a petition filed by the Witco Chemical Corp.

DATES: Effective November 30, 1983; objections by December 30, 1983.

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

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 1, 1983 (48 FR 30459), FDA announced that a petition (FAP 3B3709) had been filed by the Witco Chemical Corp., Houston, TX 77045, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 1,6-hexanediol adipic acid polyester as a component of adhesives intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Foods (21 CFR 5.61), Part 175 is amended in § 175.105 by alphabetically inserting a new item in the list of substances in paragraph (c)(5), to read as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Polyester of 1,6-hexanediol and adipic acid (CAS Reg. No. 25212-06-0)	
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 30, 1983 submit to the Dockets Management Branch (address above) written objections there to and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 30, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 15, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-31962 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 207

[Docket No. 83N-0265]

Clarification of Requirements for Change in National Drug Code Number; Change in Marketing Status

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is revising the existing national drug code (NDC) number regulations to clarify, by inserting as another example, that a change in a drug's marketing status from

prescription to over-the-counter (OTC) or OTC to prescription is a change that requires the assignment of a new NDC number. This action is being taken because some manufacturers have expressed uncertainty as to whether a new NDC number is required when the marketing status of a drug product changes. The intended effect of this action is to make clear that a change in the marketing status of a drug product is a significant change requiring the assignment of a new NDC number.

EFFECTIVE DATE: November 30, 1983.

ADDRESSES: 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: Richard L. Arkin, National Center for Drugs and Biologics (HFN–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: FDA's regulations in 21 CFR Part 207 set forth a system for registration of producers of drugs and listing of drugs in commercial distribution. The regulations implement section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360). Section 207.30 (21 CFR 207.30) provides for the submission of updated drug listing information at certain times. Section 207.35 (21 CFR 207.35) sets forth the NDC numbering system by which drug products are identified, and includes among its provisions a requirement that a new NDC number be assigned to a drug product under certain conditions. When a new NDC number is assigned, the requirement for updating the drug listing is triggered.

The NDC numbering system, codified in § 207.35, is a method by which the labeler of a product (the manufacturer or distributor as registered under Part 207), the drug product, and the trade package size or type can be identified. FDA assigns the labeler code portion. The labeler assigns the product and package code and submits a drug product's NDC code to FDA at the time of submission of its drug listing information. Section 207.35(b)(4)(i) requires the registrant to assign a new NDC number "If any change occurs in those product characteristics that clearly distinguish one drug product version from another * * *"

Some drug manufacturers have expressed uncertainty as to whether a change in the marketing status of a drug product from prescription to OTC or OTC to prescription is significant enough within the meaning of § 207.35(b)(4)(i) to require assignment of a new NDC number. A number of active ingredients that had previously been limited to prescription are now being marketed OTC as a result of the continuing OTC drug product review conducted under § 330.10 (21 CFR 330.10). Other drugs have had their marketing status changed as the result of supplemental NDA approvals. Some firms have assigned new NDC numbers to these products, while others have not. FDA's policy has always been that a change in marketing status from prescription to OTC or OTC to prescription constitutes a change,"* * * that clearly distinguishes one drug product version from another * * *" under 21 CFR 207.35(b)(4)(i), and the agency has advised interested parties of this enforcement policy whenever asked. The agency is clarifying the requirements for change in NDC numbers by revising the regulation to add an additional example of a situation requiring a new NDC number; this example is a change in marketing status from prescription to OTC or OTC to prescription.

The marketing of an OTC drug that bears the same NDC number that it carried as a prescription drug causes disruption in the process for evaluating drug reimbursement claims for both Medicare/Medicaid and private third party reimbursement programs. The prescription or OTC status of a drug is one of the primary determinants of whether a drug is compensable in many insurance programs. Because many reimbursement programs use a system which lists drugs by NDC number, changing a drug from prescription to OTC status or from OTC to prescription status without changing the NDC number can cause confusion and delays.

A letter discussing FDA's policy regarding NDC numbers has already been sent to manufacturers of prescription drugs. This action is intended to clarify FDA's policy by changing the language of the rule so that all current and future manufacturers, third-party reimbursement organizations, and other interested persons will be fully aware of the agency's requirements.

Notice and comments are not necessary before issuing this clarification (see 5 U.S.C. 553(b)(B)). The purpose and major aspects of this rule were described in the preamble to the July 31, 1979 proposed rule (44 FR 44884) and in the preamble to the final rule published June 6, 1980 (45 FR 38042). This is not a new regulation; it merely clarifies an existing rule by adding an additional example to a nonexclusive listing of situations requiring certain actions to be taken by a drug manufacturer. Because this clarification only inserts an additional example into the rule language that states what has been past practice and policy of the agency, no purpose is served by notice and comment or by delaying the effective date. Thus, the Commissioner has determined for good cause that notice and comment are impracticable, unnecessary, and contrary to the public interest.

This clarification becomes effective on date of publication. If comments are received which necessitate changes in the clarification, a revised or modified clarification will be published.

The agency has determined pursuant to 21 CFR 25.74(d)(13) (proposed December 11, 1979; 44 FR 71742) that this clarification 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.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), the agency has carefully analyzed the economic consequences of this final rule. This final rule is merely a clarification of an existing rule which will have no economic consequences, and the agency has determined that it is, therefore, not a "major rule" as defined in Executive Order 12291. Further, the agency certifies that this clarification will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 207

Drug listing, Drug registration, Reporting requirements.

PART 207—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 510, and 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 352, 355, 360, and 371)) and under 21 CFR 5.11 as revised, Part 207 is amended by revising § 207.35(b)(4)(i) to read as follows:

§ 207.35 Notification of registrant; drug establishment registration number and drug listing number.

* * * * *

(b) * * *

(4)(i) If any change occurs in those product characteristics that clearly distinguish one drug product version from another, the registrant shall assign a new NDC number to the new product version and submit that information to FDA. Such a change includes, but is not limited to, a change in active ingredient(s); strength or concentration of active ingredient(s); dosage form; route of administration, if it also includes a change in product formulation; product name; and a change in marketing status from prescription to over-the-counter or over-the-counter to prescription. If, by notice in the **Federal Register**, FDA requires a change in drug product characteristics and determines the change will require assignment of a new product code to the reformulated product, FDA will announce its determination in the **Federal Register** publication that requires the change, setting forth its reasoning and justification for its determination. If a change only in the trade package is involved, the registrant may revise the trade package code without the assignment of a new product code segment, but shall inform FDA of the new code for the trade package and the characteristics of the new trade package.

* * * * *

Interested persons may submit to the Dockets Management Branch (address above), written comments about this clarification. 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. Such comments will be considered in determining whether amendments, modifications, or revisions to the clarification are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective November 30, 1983.

(Secs. 201, 502, 505, 510, and 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 352, 355, 360, and 371))

Dated: November 21, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-31961 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

Geological and Geophysical Explorations on the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule changes the requirement for submitting certain data and information collected across a proposed drilling location for a deep stratigraphic test well offshore from mandatory to optional. This change eliminates the need to submit the information when it is determined to be unnecessary and burdensome.

EFFECTIVE DATE: December 30, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: On June 30, 1983, the Minerals Management Service (MMS) published a notice of proposed rulemaking in the **Federal Register** (48 FR 30148) proposing to amend 30 CFR 251.6-2. The current rule requires the submission of certain data and information collected across a proposed location for drilling a deep stratigraphic test well. The information must include, but not be limited to, data and information from seismic, bathymetric, side-scan sonar, and magnetometer surveys so as to allow evaluation of the structural detail to the total depth of the proposed test. The information is used to evaluate a Drilling Plan submitted pursuant to an application for a prelease permit. Since side-scan sonar and magnetometer data and information are often not necessary to make the evaluation, it was proposed to make the submission of side-scan sonar and magnetometer data and information optional at the discretion of the Director. This notice carries forward the decision of the Department of the Interior (DOI) to promulgate a final rule based on the proposal.

Comments

A total of 10 comments and recommendations were received in response to the Notice of Proposed Rulemaking. All commenters were representatives of the regulated industry. All comments received were supportive of the proposed rule changes with certain recommendations as addressed in the Discussion of Comments section below.

Difference Between Proposed Rule and Final Rule

There are only minor editorial differences between the proposed rule and the final rule.

Discussion of Comments

The commenters were unanimous in support of the proposal to make the submission of certain information associated with an application for a deep stratigraphic test optional at the discretion of the Director. The commenters commended the efforts of DOI to eliminate unnecessary and burdensome regulations. Several commented that the money saved by not having to submit unnecessary information could be utilized to produce more and better data, ultimately leading to expedited exploration, development, and production of mineral resources offshore.

One commenter suggested that the Director be required to exercise the option to require the submittal of the information prior to initial data acquisition. It was claimed that exercising the option at that time would eliminate the need for repeated surveying if the Director determined the information was necessary but the applicant had not conducted the surveys during initial information acquisition. The commenter pointed out that it would also eliminate unnecessary initial surveying if the Director opted later not to require submission. We acknowledge the point that the commenter has made, but we do not agree that the regulation should require that the option be exercised initially in every instance. It is envisioned that in the majority of cases enough information will be available to permit the Director to determine whether all of the survey information is necessary and that the option can be exercised prior to initial data acquisition. However, there may be cases where not enough information is available at the outset to determine whether the information is needed or not. In those cases, the Director must reserve his right to require submission of side-scan sonar and magnetometer survey information, if necessary, after initial acquisition.

Another commenter suggested that the last line of the amended paragraph (a)(5) be changed to substitute the word "surveys" for "systems" to better characterize the nature of the data and information and "and/or" for "and" to

clarify that the Director can request information from side-scan sonar surveys, magnetometer surveys, or both. We agree with the comments, and the final rule reflects our agreement.

The same commenter suggested that we look into the information required for other permit applications as well to see if other information can be eliminated or made optional. We agree with the suggestion. We are evaluating the requirements of our rules with the view to eliminating any that are unnecessary to burdensome and to eliminate or reduce information-reporting burdens.

In accordance with the transfer of functions from the Bureau of Land Management (BLM) to MMS by Amendment No. 1 to Secretarial Order No. 3071, dated May 10, 1982, the references to BLM in 30 CFR 251.6–4 concerning surety bonds will be revised to read MMS.

The DOI has determined that this document does not constitute a major rule under Executive Order 12291 as the highest cost estimated for the surveys per test well would be $100,000 if all the surveys were required. As there are only an average of two test wells drilled per year, the highest annual cost would be $200,000. The DOI has also determined that this rule will not be a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the entities that engage in activities offshore are not considered small due to the technical complexity and financial resources necessary to conduct such activities.

As there are only an average of two test wells drilled per year and therefore only two respondents, this rule does not contain information collection requirements that require approval under 44 U.S.C. 3504(h).

Author: This document was prepared by Jane Roberts, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 251

Continental Shelf, Freedom of Information, Public lands/mineral resources, Reporting requirements, Science and technology.

Dated: October 28, 1983.

David C. Russell,

Acting Director, Minerals Management Service.

PART 251—[AMENDED]

For the reasons set forth above, 30 CFR Part 251 is amended as shown:

1. In § 251.6–2, paragraph (a)(5) is revised to read as follows:

§ 251.6–2 Permit requirements for a deep stratigraphic test.

(a) * * *

(5) Geophysical information and data sufficient to evaluate seafloor characteristics, shallow geologic hazards, and structural detail across and in the vicinity of the proposed test to the total depth of the proposed test well. Data and information from side-scan sonar and magnetometer surveys shall be submitted as required, at the option of the Director; and

* * * * *

§ 251.6–4 [Amended]

2. In § 251.6–4, references to the "Bureau of Land Management" are revised to read "Minerals Management Service."

Authority: 43 U.S.C. 1331 et seq.

[FR Doc. 83–32000 Filed 11–29–83; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3E2909/R630; PH–FRL 2479–7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the plant growth regulator ethephon in or on the raw agricultural commodity macadamia nuts. This regulation to establish a maximum permissible level for residues of ethephon in or on the commodity was requested in a pesticide petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: November 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, Rm. 716B CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of October 26, 1983 (48 FR 49524), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2909 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Hawaii.

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Contrary to a statement in the proposed rule, it should be noted that teratogenicity studies in two species are available for ethophon. The rat teratology study indicated a teratogenic NOEL >1,800 mg/kg, a maternal NOEL of 600 mg/kg, and a fetotoxic NOEL of >1,800 mg/kg. The rabbit teratology study indicated a teratogenic NOEL >50 mg kg, an embryotoxic NOEL of 50 mg/kg, a maternal toxic NOEL of 100 mg/kg, and a fetal toxic NOEL of 50 mg/kg. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated November 21, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.300 is amended by adding, and alphabetically inserting, the commodity macadamia nuts to read as follows:

§ 180.300 Ethephon; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Macadamia nuts	0.5
* * * * *	

[FR Doc. 83-31940 Filed 11-29-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2860/R614; PH-FRL 2479-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxamyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide oxamyl in or on the raw agricultural commodities peppermint hay and spearmint hay. The regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on November 30, 1983.

ADDRESS: Written comments may be submitted to the : Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 10460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716D, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of September 14, 1983 (48 FR 41186), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 3E2860 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Oregon which proposed the establishment of tolerances for residues of the pesticide oxamyl (methyl *N'*=,*N'*=dimethyl=*N*=[(methylcarbamoyl)=oxy]=1=thiooxamimidate) in or on the raw agricultural commodities peppermint hay and spearmint hay at 10 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances would protect the public health and are established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 1983.

Edwin L. Johnson,
Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.303 is amended by adding, and alphabetically inserting, the raw agricultural commodities peppermint hay and spearmint hay to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peppermint, hay	10.0
* * * * *	
Spearmint, hay	10.0
* * * * *	

[FR Doc. 31944 Filed 11-30-83; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF ENERGY

41 CFR Part 9-3

Procurement Regulations; Technical Amendment

AGENCY: Energy Department.

ACTION: Final rule: technical amendment.

SUMMARY: Section 9-3.805-50 of the Department of Energy Procurement Regulations (DOE-PR) 41 CFR 9-3.805-50, lists, at paragraph (a), certain DOE management officials and establishes dollar thresholds at which these management officials will generally serve as source selection officials. This provision is a matter of agency organization, practice, or procedure, which was included in the DOE-PR as a matter of convenience to the Department of Energy. It has since been determined, however, that the internal DOE directives system, augmented by specific delegations of authority, is a more appropriate vehicle for the designation of source selection officials. For this reason, section 9-3.805-50(a) is being rescinded.

EFFECTIVE DATE: This amendment will be effective November 30, 1983.

ADDRESS: Comments, if any, should be addressed to the Department of Energy, Procurement Policy Branch, MA-421.1, Forrestal Building, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Procurement Policy Branch, Department of Energy, (202) 252-8188.

SUPPLEMENTARY INFORMATION: Designations of source selection officials are a delegation of the contracting authority of the Secretary of Energy (see sections 642 and 646 of the Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7252 and 7256). As such, they are a matter of agency organization, procedure, and practice. They are not a substantive rule, imposing obligations, granting rights, or producing other significant effects on private interests. The use of a regulatory framework for such delegations is inconsistent with management principles followed by the Department, which hold that source selection authority should be delegated and exercised pursuant to management decisions made in light of specific acquisitions. It has been determined, therefore, that DOE-PR section 9-3.805-50(a) should be rescinded. This rescission is being promulgated by rulemaking because the subsection

being deleted was originally promulgated as part of the DOE–PR, which was promulgated, *in toto*, by rulemaking. Although, as noted above, the provision for designation of source selection officials was initially included in the publication of the DOE–PR as a matter of convenience to the public, it is generally recognized that delegations of authority are exempt from the rulemaking requirements of 5 U.S.C. section 553. The exemption from rulemaking for matters of internal agency organization, procedure, or practice, 5 U.S.C. 553(b)(3)(A), is available to the Department of Energy, unlike the exemption for public property, loans, grants, or contracts, 5 U.S.C. 553(a)(2), which was made unavailable to the DOE by section 501(b)(3) of the DOE Organization Act. (Section 644, Department of Energy Organization Act Pub. L. 95–91, 42 U.S.C. 7254). Future delegations of source selection authority, therefore, need not be the subject of rulemaking.

The use of the DOE directives system, rather than regulation, for the delegation of source selection authority is also reflected in the recent publication of the proposed Department of Energy Acquisition Regulation (DEAR) on September 28, 1983 (48 FR 43772). The DEAR provisions for negotiated procurement do not address the designation of source selection officials or delegation of source selection authority.

Accordingly, the existing paragraph (a) of section 9–3.805–50 is removed, and the existing paragraphs (b), (c), (d), (e), and (f) are redesignated as (a), (b), (c), (d), and (e), respectively. As revised, section 9–3.805–50 reads as set forth below:

List of Subjects in 41 CFR Part 9–3

Government procurement, Reporting and recordkeeping, Small business.

Authority: Section 644, Department of Energy Organization Act, Pub. L. 95–91, 42 U.S.C. 7254.

Issued in Washington, D.C. on November 22, 1983.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 9—[AMENDED]

41 CFR Part 9 is amended to remove paragraph (a) of § 9–3.805–50 and redesignate the existing paragraphs (b) (c) (d) (e) and (f) as paragraphs (a) (b) (c) (d) and (e) respectively. As revised, § 9–3.805–50 reads as below.

§ 9–3.805–50 Selection procedures.

(a) Source evaluation board (SEB) procedures shall be used for all negotiated competitive prime procurements expected to exceed $5 million, excepting procurements for architect-engineer services, and procurements specifically waived by the Senior Procurement Official, Headquarters. Detailed guidance regarding the designation and operation of the SEBs are set forth in the SEB Handbook (Procurement Regulation Handbook Number 1). RFPs prepared by formal SEBs are reviewed by a solicitation review panel conducted by Headquarters. SEB procedures shall be used when applicable in lieu of subparagraphs (b) through (e) of this section.

(b) Negotiated competitive procurements equal to or below $5 million are not subject to the SEB Handbook (Procurement Regulations Handbook No. 1) except for those situations as determined by the Senior Procurement Official, Headquarters. For those under $5 million, less formal procedures are used. For those procurements under $5 million but more than $1 million, source evaluation panels may be established. The panels may follow the policies and procedures set forth in the SEB Handbook (Procurement Regulations Handbook No. 1) as a guide. For procurements under $1 million, less formal source evaluation and selection procedures shall be used.

(c) The Contracting Officer may form teams to evaluate the technical, business and management, and cost aspects of proposals. When teams are used, each will function independently of the other and report its findings to the Contracting Officer. The Contracting Officer will discuss those findings with the teams (or representatives thereof) separately or together, as may be more helpful. The Contracting Officer will negotiate and execute the contractural instrument, using, in many cases, some of the same specialists who participated in earlier evaluations and discussions. DOE–PR Part 9–51 sets forth administrative requirements for the review and approval of certain contract actions.

(d) In selections other than where price is determining factor, the evaluation procedures set forth in paragraphs (d) (1), (2) and (3) of this section should be considered:

(1) Technical evaluation. Generally, the Contracting Officer must rely on scientific and engineering personnel for assistance in reviewing proposals from a technical point of view. It is imperative, therefore, that technical evaluations and findings be fully documented and reviewed by responsible personnel. The report should reflect the scoring and ranking of the proposals and shall identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. After evaluation and preparation of written and signed evaluation findings by the technical evaluators, such evaluations and proposals shall be returned to the Contracting Officer or authorized representative, and maintained as a permanent record in the contract file.

(2) Business and management evaluation. Management capabilities of the offeror to perform the required work in a timely manner must be appraised. In making this appraisal, the following factors, as appropriate, and as stated in the RFP must be considered: The company's management organization; past performance; reputation for reliability; availability of required facilities; cost controls; ability to control, maintain and account for any property provided by the Government; the offeror's willingness to devote its resources to the proposed work with appropriate diligence; and financial capacity, certifications, representations, special clause requirements and any other pertinent administrative and business information that may have been requested in the RFP.

(3) Price/cost considerations. Each proposal requires some form of price or cost analysis. The evaluation should consider items such as categories and amounts of labor, indirect costs, materials, travel, computer time, as well as information with regard to the contractor's past cost performance, including contracts or subcontracts for like services or supplies. The Contracting Officer must exercise judgment in determining the extent of analysis in each case. Price/cost analysis should be performed by personnel trained in this discipline. (The "Armed Services Procurement Regulation Manual for Contract Pricing," ASPM No. 1, may be used as a guide in the review, analysis, negotiation and documentation of contract prices.)

(e) Personnel from DOE, other Government agencies, consultants, and contractors including those who operate or manage Government-owned facilities

may be used in the selection process as advisors when their services are necessary and available. When personnel outside the Government, including those who operate or manage Government-owned facilities, are used as advisors, approval and disclosure procedures as outlined in 9–3.150–4 (b) and (c) shall be followed. In all instances, such personnel will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements.

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BILLING CODE 6450–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. A–23]

Use of Carrier Contractors for Express Small Package Transportation

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation prescribes policies, procedures, and contract rates applicable to civilian executive agencies and departments when next day express small package transportation service from and to specified city-pairs is required.

DATES: *Effective date:* October 1, 1983.
Expiration date: September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph M. Napoli, Policy Development and Analysis Division, FTS 557–1256/(703) 557–1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101–40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

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

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

October 28, 1983.

Federal Property Management Regulation; Temporary Regulation A–23

To: Heads of Federal agencies.
Subject: Use of carrier contractors for express small package transportation.

1. *Purpose.* This regulation prescribes policies, procedures, and contract rates applicable to Federal civilian executive agencies and departments when next day express small package transportation service from and to specified city-pairs is required.

2. *Effective date.* This regulation is effective October 1, 1983.

3. *Expiration date.* This regulation expires September 30, 1984, unless sooner canceled or revised.

4. *Background.* Under section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. Accordingly, the GSA Office of Federal Supply and Services, Office of Transportation (FT), has entered into a contract with the carrier listed in attachment A for the transportation of express small packages from and to cities (including their commercial zones) designated in Attachment A. In consideration of the contract rates listed in attachment A, the Government has agreed to place all of its transportation requirements for express small package service with the contractor specified.

5. *Scope.* This regulation is mandatory for all civilian executive agencies pursuant to section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended.

6. *Definitions.* a. "Commercial form," means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading (41 CFR 101–41.302–3);

b. "Commercial forms and procedures" means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government bills of lading (SF 1103) and their related billing procedures (See 41 CFR 101–41.304–2);

c. "Contractor" means the carrier awarded a GSA contract for the transportation of express small packages;

d. "Express small package" means a package containing general commodities (except hazardous materials defined in § 172.101 of Title 49 of the Code of Federal Regulations) which weighs 50 pounds or less, and measures a maximum of 108 inches in length and girth combined, but does not include letters except as provided in par. 7a, below.

e. "Geographical areas" means the base cities listed in attachment A, municipalities contiguous to the base cities, and all other municipalities and unincorporated areas adjacent to the base cities depending on distance and population. For purposes of this regulation, the geographical area of a city is the commercial zone of a city as defined in Part 1048 of Title 49 of the Code of Federal Regulations;

f. "Holiday" means a Federal holiday;

g. "Special service" means any other agency required service, such as weekend delivery, escorted courier service, proof of delivery, etc.; and

h. "Standard service" means pickup and/or delivery service between 8 a.m. and 4 p.m. (local time), Mondays through Fridays except holidays.

7. *Applicability.* a. The scope of the express small package contract does not include "letters" (see **Note**), i.e., routine first class mail, as defined in United States Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are so "extremely urgent" that the value or usefulness of the letters would be lost or greatly diminished if not delivered within the time limits noted in par. (2), below.

(1) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least three dollars or twice the applicable U.S. postage for First Class Mail (including priority mail) whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(2) If the value or usefulness of a letter would be lost or greatly diminished if

the letter were not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract.

Note.—"Letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." See 39 CFR 310.1 for specific exclusions from the definition.

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed within 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later. A letter dispatched after noon and before midnight must be delivered by 10 a.m. of the addressee's next business day.

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day.

(c) Agencies shall assure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent—Private Carriage Authorized." In addition, each outside cover shall show the names and addresses of the contractor, the sender, and the addressee.

(d) The determination that a letter or letters meet the extreme urgency provisions of 39 CFR 320.6 shall be made by the responsible sending office. If such letters are sent to an agency mail room for pickup by a private carrier rather than pickup at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent—Private Carriage Authorized."

(e) Any letters, the extreme urgency of which meet the requirements of 39 CFR 320.6, sent by a private express carrier shall be placed in plain envelopes.

(3) In addition to the exception for extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed (a) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day, and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center.

(4) For further guidance with respect to shipments of letters, including data processing materials, see United States Postal Service Regulations at 39 CFR Parts 310 and 320, or call the Law Department of the Postal Service at FTS 245–4616.

b. The provisions of this regulation apply only when civilian executive agencies subject to this regulation are using commercial forms and procedures. These agencies shall ship their express small packages by the contractor specified in attachment A, except that the Government reserves the right to use the United States Postal Service when in the Government's best interest.

c. On request, GSA will exempt agencies from the mandatory use of this regulation when the reasons for exemption are determined by GSA to be in the best interest of the Government. Requests are to be sent to the General Services Administration, Office of Federal Supply and Services, Office of Transportation (FT), Washington, DC 20406.

d. If the contractor offers to the general public a rate that is lower than the rate chargeable to the Government under this regulation for the same service, the ordering agency shall use the lower rate.

e. If an express small package carrier not listed in attachment A publishes for general public use a rate that is lower than the contractor's rate under this regulation for the same service, agencies may use the noncontract carrier to obtain the lower rate.

8. *Contractor responsibilities.* a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Standard service (see subpar. 6h);

(2) Delivery service for "extremely urgent" letters (see par. 7);

(3) Pickup service on the same day pickup is requested (see subpar. 11a); and

(4) Delivery service on the next day (excluding Saturdays, Sundays, and holidays) following receipt from the shipper. Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the acts of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a shall be transported free of charge to the Government.

9. *Agency payment responsibilities.* In accordance with the terms of the contract, payments will be due on the 30th day after the date of actual receipt of a proper invoice unless otherwise specified by the consignor on the commercial form. Agencies shall claim reimbursement of paid transportation charges when it is subsequently determined that the contractor failed to furnish next day delivery as provided in subpar. 8a.

10. *Shipment weight and charge.* Rates applicable under this regulation will be assessed on the total weight of each shipment moving at one time from one consignor to one consignee. For example, if three packages weigh one pound each, the applicable charge for the shipment will be computed at the rate applicable to one 3-pound package.

11. *Agency procedures for obtaining service.* a. Pickup service as noted in subpar. 6h may be ordered on an as-needed basis. In these instances, the agency shall allow the contractor a minimum of 2 hours to make the pickup. For repetitive shipments, the requesting agency may arrange with the contractor to furnish regular pickup service at specified times on specified days to meet the agency's shipping requirements.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one consignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the nearest whole pound. Shipments weighing less than one pound shall be shown as weighing one pound.

d. The contract rates specified in attachment A do not apply when special services are required. However, agencies requiring special services may use the contractor or any other carrier that can provide the special services needed.

12. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contracts and this regulation were developed. The agency requesting the express small package service shall notify the appropriate GSA regional Customer Service Bureau, Transportation Services Branch, in writing when the contractor fails to meet its responsibilities. For purposes of this paragraph, the appropriate GSA regional Transportation Services Branch is that office listed in attachment B having jurisdiction over the State in which shipment originates. The regional Transportation Services Branch will compile the written reports received from requesting agencies and forward these reports to the Office of Transportation (FT) for appropriate action.

13. *Effect on other express small package transportation contracts.* There are no known existing similar express small package contracts with the civilian executive agencies subject to this regulation. However, if contracts of this kind should exist, the provisions of this regulation will apply upon expiration of other existing contracts.

14. *Comments.* Comments and recommendations concerning use of this program or implementing regulations may be submitted to the General Services Administration, Office of Transportation (FT), Washington, DC 20406.

Ray Kline,

Acting Administrator of General Services.

CITY-PAIRS, CONTRACT PRICES, AND CONTRACTOR

Geographical areas	Base price for first pound	Price for each additional pound	Contractor code
From ATLANTA, GA to:			
Baltimore, MD	$4.00	$1.00	DHL
Miami, FL	4.00	1.00	DHL
Nashville, TN	4.00	1.00	DHL
Washington, DC	4.00	1.00	DHL
From CHICAGO, IL to:			
Cleveland, OH	4.00	1.00	DHL
Detroit, MI	4.00	1.00	DHL
Kansas City, MO	4.00	1.00	DHL
Minneapolis, MN	4.00	1.00	DHL
Washington, DC	4.00	1.00	DHL
From LOS ANGELES, CA to:			
Denver, CO	4.00	1.00	DHL
San Diego, CA	4.00	1.00	DHL
San Francisco, CA	4.00	1.00	DHL
Washington, DC	4.00	1.00	DHL
From SAN FRANCISCO, CA to:			
Kansas City, MO	4.00	1.00	DHL
Los Angeles, CA	4.00	1.00	DHL
Seattle, WA	4.00	1.00	DHL
Washington, DC	4.00	1.00	DHL
From WASHINGTON, DC to:			
Atlanta, GA	4.00	1.00	DHL
Boston, MA	4.00	1.00	DHL
Dallas, TX	4.00	1.00	DHL
Denver, CO	4.00	1.00	DHL
Los Angeles, CA	4.00	1.00	DHL
New York, NY	4.00	1.00	DHL
San Francisco, CA	4.00	1.00	DHL

Examples of Shipping Costs

1-pound shipment:

1 pound @ $4.00 = $4.00

4-pound shipment:

1 pound @ $4.00 = $4.00
3 pounds @ $1.00 = $3.00
Total, $7.00

CONTRACTOR CODE, NAME, AND TELEPHONE NUMBERS

DHL-DHL Airways, Inc.:	
Atlanta, GA	404-997-1635
Baltimore, MD	301-768-3730
Boston, MA	617-567-8900
Chicago, IL	312-456-3200
Cleveland, OH	216-671-4700

CONTRACTOR CODE, NAME, AND TELEPHONE NUMBERS—Continued

Dallas, TX	817-481-8515
Denver, CO	303-388-9212
Detroit, MI	313-386-6810
Kansas City, MO	816-891-7222
Los Angeles, CA	213-973-7300
Miami, FL	305-592-8795
Minneapolis, MN	612-854-3452

CONTRACTOR CODE, NAME, AND TELEPHONE NUMBERS—Continued

Nashville, TN	800-231-3391
New York, NY	212-917-8000
San Diego, CA	619-293-3906
San Francisco, CA	415-697-9025
Seattle, MA	206-433-5601
Washington, DC	703-684-8733

AREAS OF JURISDICTION, GSA REGIONAL CUSTOMER SERVICE BUREAU, TRANSPORTATION SERVICES BRANCH

Region	Jurisdiction	Address	Telephone
1	CT, MA, ME, NH, RI, VT	GSA (1FBT), J. W. McCormack, Post Office and Court House, Boston, MA 02109.	FTS 223-2735, COML 617-223-2735.
2	NJ, NY, Puerto Rico, and Virgin Islands.	GSA (2FBT), 26 Federal Plaza, New York, NY 10007	FTS 264-1286, COML 212-264-1286.
3	DE, MD (Note A), PA, VA (Note B), WV.	GSA (3FBT), 9th & Market Streets, Philadelphia, PA 19107.	FTS 597-1361, COML 215-597-1361.
4	AL, FL, GA, KY, MS, NC, SC, TN	GSA (4FBT), 75 Spring Street, SW., Atlanta, GA 30303.	FTS 242-5121, COML 404-221-5121.
5	IL, IN, MI, MN, OH, WI	GSA (5FBT), 230 S. Dearborn Street, Chicago, IL 60604.	FTS 353-5375, COML 312-353-5375.
6	IA, KS, MO, NE	GSA (6FBT), 1500 E. Bannister Road, Kansas City, MO 64131.	FTS 926-7519, COML 816-926-7519.
7	AR, LA, NM, OK, TX	GSA (7FBT), 819 Taylor St., Fort Worth, TX.	FTS 334-2733, COML 817-334-2733.
8	CO, MT, ND, SD, UT, WY	GSA (8FBT), Denver Federal Center, Building 41, Denver, CO 80225.	FTS 234-2626, COML 303-234-2626.
9	American Samoa, AZ, CA, GU, HI, NV, Northern Mariana Islands, Pacific Trust Territories.	GSA (9FBT), 525 Market Street, San Francisco, CA 94105.	FTS 454-9293, COML 415-974-9293.
10	AK, ID, OR, WA	GSA (10FBT), GSA Center, Auburn, WA 98002.	FTS 396-7455, COML 206-931-7455.
NCR	DC, MD (Note C), VA (Note D)	GSA (WFBT), 7th & D Streets, SW., Washington, DC 20407	FTS 472-1626, COML 202-472-1626.

Note A.—Except for those counties under NCR jurisdiction as listed in Note C.

Note B.—Except for those cities and counties under NCR jurisdiction as listed in Note D.

Note C.—Counties of Prince Georges and Montgomery only.

Note D.—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 83-31955 Filed 11-29-83; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 434, 435, and 447

State Medicaid Contracts

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

ACTION: Final rules.

SUMMARY: These regulations—

(1) Make it possible for Medicaid agencies to contract on a risk basis with health maintenance organizations (HMOs) other than those that meet all the requirements for a Federally qualified HMO;

(2) Ease requirements that limit the proportion of HMO enrollees that may be persons eligible for Medicare or Medicaid; and

(3) Permit States to continue to provide Medicaid (through the benefits provided to the recipient as an HMO enrollee), for a period of up to 6 months from the date of enrollment in a Federally qualified HMO, even if the enrollee loses Medicaid eligibility before the end of that period.

These regulations are necessary to implement section 2178 of the Omnibus Budget Reconciliation Act of 1981. They also include changes made as part of regulatory reform. The intent is to encourage and enable Medicaid agencies to make greater use of HMOs and other prepaid health plans (PHPs) to

provide cost-effective health care to Medicaid recipients.

In addition, as part of our regulatory reform effort, we are eliminating several existing regulatory requirements and simplifying others to provide greater flexibility for States in contracting with prepared health care organizations.

DATE: These regulations are effective December 30, 1983 with the exception of those sections in the paperwork reduction provision of this preamble.

FOR FURTHER INFORMATION CONTACT: Bernard Truffer, (301) 597-1369.

SUPPLEMENTARY INFORMATION:

Background

Medicaid regulations at 42 CFR Part 431, Subpart L, contained a number of requirements applicable to State contracts with HMOs and other types of prepaid health plans (PHPs). Statutory amendments made by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) require changes in the regulations. In addition, the HCFA Task Force on Regulatory Reform has reviewed certain of the requirements and determined that they can be eliminated or modified to provide greater opportunity for States to use these organizations as a cost-effective means of furnishing services.

Before the 1981 amendments, section 1903(m) of the Social Security Act allowed Federal financial participation (FFP) in State expenditures under a risk-basis contract for comprehensive medical services only if the contract was with an HMO or with certain other entities (specified in section 1903(m)(2)(B)) that had received grants under the Public Health Service Act or the Appalachian Regional Development Act or had contracts with Medicaid agencies before enactment of the HMO provisions. Section 1903(m) defined HMO as an organization that furnished certain specified services and met the requirements of sections 1301 (b) and (c) of the Public Health Service (PHS) Act regarding form of organization and manner of furnishing services. As a condition of payment to an HMO, Section 1903(m) required that: (1) The Secretary determine that the organization meets the HMO definition; and (2) the HMO comply with a specified composition of enrollment standard (see below the discussion of "Composition of Enrollment"). The entities specified in section 1903(m)(2)(B) are exempted from these two conditions, and are described in the regulations as PHPs that qualify for risk contracts.

The law does not define "risk basis", but uses it in the same sense as "prepaid capitation basis". Section 431.502 of the regulations defines "risk" as the chance that the contractor's cost of furnishing the services may exceed the reimbursement, that is, the capitation or premium payments determined at the start of a contract period. Although the law does not define "nonrisk", we have interpreted the term to mean that a Medicaid agency may make retroactive adjustments at the end of a contract period so that the contractor is reimbursed for costs actually incurred. The upper limits for State agency payments under risk contracts are different from the upper limits for nonrisk contracts. (See below discussion of "Payments Limits".)

Changes Based on Statutory Amendments

The changes made by section 2178 of Pub. L. 97-35, and the corresponding changes in the regulations are discussed below:

Definition of HMO

Section 2178 of Pub. L. 97-35 broadens the definition of HMO to permit FFP for comprehensive services furnished, under a risk contract, not only by organizations that meet the requirements of sections 1301 (b) and (c) of the PHS Act (hereafter referred to as Federally qualified HMOs), but also for services furnished by other entities that—

1. Make their services available to Medicaid enrollees to the same extent they are available from other sources to nonenrolled Medicaid recipients in the area; and

2. Make provision (satisfactory to the State) against the risk of insolvency and assure that Medicaid recipients will not be responsible for the HMO's debts if it does become bankrupt.

The final regulations provide that, if a State plan provides for risk-basis contracts with other than Federally qualified HMOs, it must set forth the State's definition of HMO, a definition which must include at least the two statutory requirements listed above (§ 434.20(c)). The State may impose additional requirements it finds necessary. Since section 1903(m)(1)(B) of the Act still requires the Secretary to determine whether an organization is an HMO, § 434.71(b) requires the HCFA Regional Office to certify that contractors meet the State definition of HMO.

Composition of Enrollment

Previous law specified that Medicare and Medicaid beneficiaries must constitute less than 50 percent of the enrollees of an HMO and provided for a temporary waiver of that requirement (up to 3 years) for HMOs entering the program.

Section 2178 of Pub. L. 97-35 raised from 50 percent to 75 percent the maximum proportion of an HMO's enrollees that may be persons entitled to Medicare or Medicaid and retained the temporary waiver of that upper limit for new HMOs. In addition, it authorized waiver or modification of the limit for public HMOs if there are special circumstances that justify this and if the HMO is making reasonable efforts to enroll non-beneficiaries. The provision recognizes that HMOs run by State, county, or municipal hospitals or health departments may find it difficult to meet the 75 percent limitation because they serve primarily the beneficiaries of public programs.

Corresponding amendment is made in §§ 434.26 (b) and (c).

Contract Requirements

The section 2178 amendments to section 1903(m) of the Act make clear that the contract between a Medicaid agency and the HMO must provide for the following:

1. The capitation fee is determined on an actuarially sound basis.

2. The secretary and the State may inspect and audit the financial records of the contractor and any subcontractors.

3. In enrolling Medicaid recipients, the HMO will not discriminate on the basis of the individual's health status or need for health care services.

4. A Medicaid enrollee may terminate enrollment at any time without cause, and is informed of this right when he or she enrolls.

5. Either the State or the HMO pays promptly for emergency services furnished by a source other than the HMO.

These provisions are implemented by several sections of Subpart C of Part 434.

Extended Medicaid Eligibility

One factor that kept States from making greater use of HMOs is the administrative difficulties caused by fluctuations in Medicaid eligibility. Since beneficiaries may have frequent changes in income, they may go on and off the rolls several times during a relatively short period. This causes problems for both the State and the HMO. The State's system for making capitation payments to the HMO may not always be tied closely enough to the eligibility process to ensure that the payments stop when eligibility ends. Thus, the State may make three or four

payments for a person not currently eligible. The fluctuations also make it impossible for the HMO to be certain of the amounts it will receive, in capitation fees, for a particular period.

Section 2178 of Pub. L. 97-35 amended section 1902(e) of the Act to provide States the option of continuing Medicaid, for a period of up to 6 months from date of enrollment in a Federally qualified HMO, even if the enrollee loses Medicaid eligibility before the end of that period. This will help to resolve the administrative problems for both States and HMOs and facilitate use of HMOs in Medicaid.

This option is set forth in new §§ 435.212 and 435.326.

Regulatory Reform Changes

The changes made as part of our regulatory reform effort are intended to simplify the regulations and provide States greater flexibility in using HMOs and PHPs as sources of Medicaid services.

1. *Elimination of certain requirements.* The Medicaid regulations repeated some of the requirements that are contained in the PHS Act, and are applied by the Public Health Service in determining whether an organization is a Federally qualified HMO. Because the repetition is unnecessary with respect to these HMOs and because we are not imposing these requirements for State-defined HMOs, we have eliminated them from the regulations. These include, for example, requirements for feasibility and planning studies (previous § 431.541), certain enrollment provisions (§§ 431.527(a) and 431.528(a)), and emergency service provisions (§431.532(a)).

In addition to the PHS requirements, the regulations contained certain other requirements not specified by statute. We believe these can be eliminated, without decreasing accessibility or quality of services, in order to permit States greater freedom in determining the types of contracts they wish to have. Accordingly, we have deleted the requirements for specifying in contracts certain risk, savings apportionment, and reinsurance provisions (§§ 431.524-431.526); a requirement that the contractor provide information on health care to each enrollee to help improve his or her health status (§ 431.536), and a provision for contractor distribution of general information about its services (§ 431.545). We believe these are the types of requirements best handled by each State both in the overall context of its health care delivery system, and with respect to the particular needs of each contract situation.

2. *HMO nonrisk contracts.* The final regulations provide that Medicaid agencies may enter into nonrisk contracts (as well as risk contracts) with Federally qualified HMOs (§ 434.20(b)) as well as with PHPs.

This removes another restriction not required by statute.

3. *Payment limits.* Previous regulations (§ 447.361) stated that total capitation payments made by the agency could not exceed what it would pay for the same group of services on a fee-for-service basis, or what other third party payers were paying for comparable services under comparable circumstances. We have revised § 447.361—

- To make clear that it applies only to risk contracts; and
- To delete the reference to what other third party payers are paying.

We have concluded that the third party payer language is redundant and confusing because, in most cases, third party payment rates are indirectly incorporated in the fee-for-service rates. We have also added a new § 447.362 to provide that, for nonrisk contracts, the agency payments may take into account the cost of administrative services (such as quality assurance or securing payment from liable third parties) that are performed by the contractor, but would have to be performed by the Medicaid agency itself if it paid on a fee-for-service basis.

The regulatory reform changes apply to contracts with all PHPs, not just HMOs, and we have extended to PHPs the statutory provision that raises to 75 percent the limitation on the composition of enrollment. As indicated in the preamble to the proposed rules, we are continuing our review of the requirements applicable to risk and nonrisk contracts with PHPs to determine whether all of them need to be retained. If we determine some can be eliminated, we will publish a notice of proposed rulemaking to explain those changes. However, we do not want to delay implementation of the options provided by the statutory amendments, pending completion of that review. For that reason, these regulations contain the existing requirements not yet reviewed as well as the changes discussed above.

In summary, the changes will increase flexibility and thus encourage States to make greater use of HMOs and other prepayment plans to furnish Medicaid services. The additional options make it possible for Medicaid agencies to:

- Enter into risk contracts with State-defined HMOs (as well as Federally qualified HMOs, and certain other prepayment plans specified in the Medicaid statute).
- Enter into nonrisk contracts with Federally qualified HMOs, as well as with State-defined HMOs and other prepayment plans.
- Continue to provide Medicaid, through the HMO enrollment contract, for a period of up to 6 months from the date of enrollment, to a Medicaid enrollee of a Federally qualified HMO, even if the enrollee loses Medicaid eligibility before the end of the specified period.

We have also reorganized all of the material on contracts, including contracts made by a State Medicaid agency with entities, other than HMOs and PHPs, and redesignated it under a new Part 434.

Discussion of Comments and of Changes From the NPRM

A notice of proposed rulemaking published on September 30, 1982 (47 FR 43087) set forth most of the changes that appear in these final regulations. We received comments from 7 State departments, 2 city agencies, and 3 HMOs. One of the State departments and one of the HMOs merely expressed support for the proposal. The comments from the others, our responses to those comments and the changes made in the September proposal (either in response to comments or as part of regulatory reform) are discussed below.

Section 434.2 Definitions.

Comments: 1. Delete the word "significant" from the definition of "risk".

2. Add a definition of "nonrisk".

3. Indicate that PHPs may enter into risk and nonrisk contracts.

4. Clarify the definition of "private nonmedical institution", the apparent contradiction between "prepaid" and "reimbursed".

5. Revise the definition of "health insuring organization" to more clearly distinguish it from an HMO.

6. Include a more detailed definition of PHPs to provide States with more guidance as to what other kinds of entities they may contract with to provide Medicaid services.

Response: 1. The phrase "significant chance" has been deleted as unnecessary.

2. A definition of "nonrisk" has been added.

3. The provision for entering into either type of contract is a regulation (rather than a definition) and as such appears in § 434.20

4. The definition of private nonmedical institution has been clarified.

5. We believe that the phrase "pays for" distinguishes a health insuring organization from an HMO. An HMO furnishes the services directly or through arrangements; a health insuring organization merely pays for services furnished by others.

6. The term "prepaid health plan" was coined (in regulations published in 1978) to refer to (1) the three types of entities that are listed in section 1903(m)(2)(B) of the Act as exempt from the risk contract requirements of section 1903(m)(2)(A) of the Act; and (2) all other prepayment organizations that do not have risk comprehensive contracts. States may have risk contracts for certain scopes of services specified in the Act (and referred to in the regulations as "comprehensive services") only with the entities listed in the Act. However (as specified in § 434.20), States may enter into nonrisk contracts, or risk contracts for scope of services other than "comprehensive" services, with any other PHPs. (The requirements for these contracts are set forth in Subpart C of Part 434 of these regulations.) We believe that a more detailed definition of PHPs would simply detract from the flexibility we wish to provide to States.

Other Changes

1. The definition of contractor was revised to include clinical laboratories and management services or consultant firms.

2. Definitions of "clinical laboratory" and "professional management service or consultant firms" were added.

3. The definition of "private nonmedical institution" was clarifed.

These changes are appropriate because (1) section 1915(a)(1)(B) of the Act (added by section 2175 of Pub. L. 97-35), authorizes States to contract with laboratories selected on a competitive basis; (2) State agencies often contract with management service and consultant firms; and (3) the term "resident" is more appropriate than "inmate" for private nonmedical institutions.

Section 434.6 General requirements for all contracts and subcontracts.

Comment: One commenter expressed the view that the general contract requirements set forth in this section together with the basic rules for HMO and PHP contracts (§ 434.20) and the requirements for quality assurance (§ 434.34), and for fiscal and medical audits (§§ 434.38 and 434.53) are "unworkable, expensive, and likely to discourage HMO participation in Medicaid". Despite these objections, the commenter recommended six additional provisions for HMOs and suggested that "additional requirements may be negotiated, rather than required, among the State HCFA, and HMO authorities". Specifically he recommended that HMOs be required to:

1. Establish grievance procedures;

2. Have a quality assurance program;

3. Undergo formal annual audits with issuance of audited financial statements;

4. Meet the accreditation standards of the Joint Commission on Accreditation of Hospitals (JCAH) or other national accreditation bodies; and

5. Meet State qualifications or the qualification criteria established in Federal health planning legislation; and that a Medicare risk-basis HMO be permitted to qualify for a Medicaid HMO contract without undergoing additional review, since it will already have met the qualification criteria.

Response: The provisions to which the commenter objects are either required by statute or administratively imposed because experience has shown that they are necessary for effective administration of the program. The final regulations delete many previous requirements, some because they duplicate provisions of the Department's regulations (45 CFR Part 74, Subpart P) which require that a contract under a grant have provisions "defining a sound and complete procurement contract", others because we wish to give States greater flexibility where possible. The first two of the requirements the commenter recommends are already set forth in §§ 434.32 and 434.34. Since we are trying to allow States the greatest possible flexibility, we do not believe it would be advisable to add the other three requirements in as strict a form as recommended. However, some parts of those other recommendations are already incorporated in existing requirements. With respect to the last suggestion, we believe that an HMO which has qualified to participate in Medicare will have little difficulty in qualifying for Medicaid. However, review by the State Medicaid agency is needed because some of the rules (such as the composition of enrollment and waiver provisions) are different, because a State agency is free to impose additional requirements, and because it is the State agency (not HCFA) that contracts with the HMO or PHP. Conforming deletions were made in the rules for fiscal agent contracts (§ 434.10).

Section 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.*

Comment: HCFA should allow risk contracts with all PHPs.

Response: The statute restricts risk contracts for comprehensive services to HMOs and to the PHPs that are cited in section 1903(m)(2)(B) of the Act.

(b) *Entities eligible for other kinds of contracts.*

Comments: 1. Must the State plan provide for the kinds of contracts permitted under this paragraph?

2. The commenter objects to allowing nonrisk contracts except with Federally qualified HMOs.

Response: 1. Section 434.4 makes clear that all contracts permitted under Subpart C are optional.

2. The commenter recommends a limitation not required by the law. We prefer to give States flexibility within the requirements the law does impose for nonrisk contracts.

(c) *State plan definition of HMO.*

Comments: 1. The commenter asks whether it is correct to presume that items (a) (1)–(3) are standards to be adhered to rather than verbatim provisions required as part of State's definition, and that "as accessible", in paragraph (c)(2) means "no less accessible". (Competing health plans may use greater accessibility as an incentive to enrollment.)

2. The commenter suggests that we make clear that States may enter into risk contracts with PHPs as well as State defined HMOs.

Response: 1. The presumptions are correct.

2. Section 434.20(a)(3) specifies the PHPs with which States may have risk contracts for comprehensive services. Section 434.20(b) makes clear that States may have risk contracts for a different scope of services with any PHP.

Other Change

Regulations published on February 8, 1983 (48 FR 5730) modified the rules on cost sharing by recipients who are enrollees of HMOs or PHPs. Accordingly, we revised § 434.20 to require contracts with HMOs and PHPs to specify that any cost-sharing requirements must be in accordance with §§ 447.50 through 447.58.

Section 434.21 (Additional requirements for certain risk contracts.)

Comments: 1. The commenter asks whether provisions apply to contracts for inpatient hospital services only.

2. The commenter believes that these provisions should apply to all risk contracts.

Response: 1. We have clarified § 434.21 by listing the three types of contracts with HMOs and PHPs, and by

specifying that, except as otherwise noted, the additional requirements apply to all three types. We also made clarifying editorial changes in succeeding sections that deal with the additional requirements.

2. There is no statutory authority for a Federal requirement but States may impose the same requirements for other risk contracts.

Section 434.25 (a)(1) (Contract must specify open enrollment period.)

Comment: The commenter objects to requiring that the period be specified in the contract.

Response: We did not intend to require that actual dates be included in the contract. We have revised paragraph (a) to make that clear.

Section 434.25 (a)(1)(iii) (HMO or PHP must accept Medicaid enrollees up to the limit set in the contract.)

Comment: The commenter objects to specifying a limit in contract and believes it is preferable that the HMO or PHP inform the State agency each year of its capacity for Medicaid enrollment.

Response: It would be acceptable for the contract to specify that the HMO or PHP will inform the agency of its capacity once a year. (We realize that the phrase "in the contract" could be misleading, and have changed it to "under the contract".)

Section 434.25(b) (Contract must provide that HMO will not discriminate on the basis of health status or need for health services.)

Comments: 1. Does this provision apply to PHPs?

2. This requirement should apply to PHPs also; otherwise they have an unfair advantage in competing with HMOs.

3. HCFA should allow contracts that apportion risks in the case of high-risk recipients.

4. HCFA should allow higher overall capitation rates to compensate for high-risk recipients or separate higher rates for persons classified as high-risk under State standards.

Response: 1. & 2. The Federal requirement does not apply to contracts with PHPs, but States are free to apply this requirement to PHPs.

3. States are free to apportion risk, as long as the contract is consistent with Federal regulations, for example, is within the upper payment limits.

4. We expect that capitation rates would take into account the anticipated utilization of the HMO's entire Medicaid enrollment.

Section 434.26(a) (The proportion of HMO enrollees who are eligible for Medicare or Medicaid must be less than 75 percent).

Comment: 1. The rule should not apply to PHPs because the statute only applies to HMOs.

2. The rule should not apply to public PHPs.

3. The rule should not apply to PHPs because the waiver process is too time consuming.

Response: 1. The enrollment composition rule (initially 50 percent) was administratively extended to PHPs some years ago because experience had shown that, in prepayment plans, there is a positive correlation between the inclusion of private enrollees and quality of services. These amendments simply extend to PHPs the more liberal 75 percent provision. The impact is much less on PHPs than on HMOs because the waiver provisions are much broader, i.e., they are not limited to new facilities and to a term of not more than 3 years, and the waiver standards are less specific. In addition, we have reassigned to the States the authority for PHP waivers.

2. The regulations do not distinguish between public and nonpublic PHPs, as they do in the case of HMOs, and therefore, the rule applies to all PHPs. However, the State is free to waive the requirement for *any* PHP and could establish the distinction by granting waivers only to public PHPs.

3. Since States now have the waiver authority for PHPs, they can establish waiver procedures as simple as they wish.

Section 434.26(b)(2) (Waivers of composition of enrollment requirements for "public" HMOs).

Comment: 1. HCFA should define "special circumstances" as including locations in a "catchment area predominantly serving a low-income population".

2. The waiver for public HMOs should not exceed 3 years.

3. Waivers should be available for private HMOs that serve primarily the beneficiaries of public programs.

Response: 1. The example given could constitute a "special circumstance". We do not think it necessary or desirable to specify in regulations what constitutes special circumstances. We believe States and HMO's should be free to present any "special" circumstance that they can show justifies a waiver.

2. Although the statute does not impose time limits, HCFA is free to limit the duration of waivers. In actual practice under other statutory waiver provisions, HCFA has generally granted them only for one or two years.

3. For HMOs that are not publicly owned, the law provides for waiver, but it is limited to the first 3 years of the contract.

Section 434.27(c) (HMO may not terminate a recipient without Medicard agency approval).

Comment: The HMO should be allowed to establish policy defining good cause for termination and, within that policy, to terminate without State approval.

Response: We believe that State approval of disenrollments is necessary to ensure that an HMO or PHP does not disenroll (or encourage disenrollement by) certain enrollees for reasons inconsistent with the purposes of the Medicaid program, for example, because the enrollee requires extensive or very costly medical care. We have had problems of this nature with some prepayment plans in the past. States could give HMOs considerable discretion as long as they retain authority for final approval.

Section 434.27(d) (Enrollee may terminate enrollment at any time).

Comment: HCFA should allow contracts under which enrollees may not terminate enrollment during the first 6 months.

Response: Section 1903(m)(2)(A)(vi) of the Act specifies that an HMO risk contract for comprehensive services must provide that an enrollee may terminate enrollment without cause, effective with the second calendar month after the month in which he or she requests termination.

Other change: Section 434.27 was revised to correct a technical error. It now makes clear that the prohibition against terminating enrollment because of the recipient's health status or need for health services applies only to HMOs, not to PHPs.

Section 434.30 Emergency medical services.

Comments: 1. HCFA should redefine emergency services in narrower terms.

2. The definition of emergency services is inconsistent with Medicare definitions. The State and the HMO should be allowed to negotiate a definition of emergency services.

3. All illnesses and conditions are "unforeseen" and do not automatically justify going to an alternative provider.

Response: The definition of emergency services was based on section 1903(m)(2)(A)(vii) of the Act. That section requires that the contract

specifiy whether it is the contractor or the State that will pay for services that are furnished by a provider with which the contractor does not have arrangements, "because the services were immediately required due to an unforeseen illness, injury, or condition * * *".

The NPRM, by omitting the word "immediately", and adding reference to "severe pain and discomfort", made the proposed rule broader than the law requires. The final rule follows the language of the statute (except for changing "unforeseen" to "sudden", which we believe expresses the intent of the law more accurately) and is more consistent with a Medicare definition. Under the final rule, States are free to include in the contract a broader definition of emergency services.

Section 434.30(b) (Prompt payment for emergency services furnished by entities other than the contractor).

Comment: HCFA should define "prompt" in terms of a reasonable period of time from receipt of services.

Response: The chief purpose of this provision is to ensure that third parties know who is responsible for payment and have some expectation that the responsible party will not unduly delay that payment. Otherwise, third party providers may simply refuse to furnish the services. Each State is free to define "promptly" in accordance with its capability.

Section 434.34 Quality assurance system.

Comment: The requirement that the system be "consistent with the utilization control requirements of Part 456" is inappropriate because Part 456 governs State agency activities. Need to specify functions HMO is expected to perform.

Response: Part 456 sets forth utilization review requirements for all institutional providers of Medicaid services. An HMO must meet these requirements in its own facilities and review the performance of other entities with which it arranges for the provision of services to its enrollees. We expect that the HMO's UR system will be coordinated with the entity's UR plan so that, for instance, the HMO does not review in one week what would be reviewed the following week under the entity's own plan.

Section 434.36 Marketing.

Comment: The commenter agrees that the HMO should file all marketing materials with Medicaid agency, but opposes the agency's having approval authority of those materials.

Response: This requirement is necessary to ensure that an HMO or PHP does not use marketing materials that give a misleading or false impression about the plan's Medicaid contract. We have had problems of this sort with some prepayment plans in the part.

Section 434.38 Inspection and audit of HMO's financial records.

Comment: Audit and inspection to determine capacity to bear the risk of potential financial loss should apply to PHPs as well as HMOs when a risk basis contract is involved.

Response: Although the Act does not authorize us to impose this as a Federal requirement for PHPs, States may extend the HMO requirement to risk-basis contracts with PHPs.

Section 435.50 (State must obtain proof of HMO or PHP capability).

Comment: What suffices as proof? The commenter would prefer that the State establish standards.

Response: It is the intent of the regulation that States establish any standards for what constitutes adequate proof.

Section 435.53 Periodic medical audits.

Comment: We (an HMO) are unable to collect data on reasons for enrollment, termination, and use of services from a population as volatile as Medicaid enrollment.

Response: The Medicaid agency, not the contractor, is responsible for medical audits.

Section 434.61 (Capitation fees must be computed on an actuarially sound basis.)

Comments: 1. The commenter questions the meaning of "sound" and recommends that States be allowed to determine what constitutes a sound actuarial basis.

2. The commenter considers that the phrase "actuarially sound basis" is inappropriate for an HMO that determines fees on the basis of community rating, and recommends "sound and consistent accounting basis".

Response: 1. As long as a State follows accepted actuarial principles, it is free to determine what constitutes a "sound" actuarial basis.

2. Use of community rating is not required for a Medicaid contract. However, a community rating basis as defined in section 1302(8) of the Public Health Service Act would automatically qualify as "an actuarially sound basis", which is what the law specifically requires.

Section 434.65 (Services included in the State plan but not covered by the contract).

Comment: Does the "plan" refer to Medicaid or the HMO? Can benefits be excluded from the HMO's package (and its premium)? What does this section attempt to accomplish?

Response: The reference is to the State's Title XIX plan and the section was revised to make that clear. The purpose is to ensure that HMO and PHP enrollees have access to all services covered under the State plan when, as is permitted, the HMO or PHP contract does not cover all of them.

Section 434.70(b)(2) (HCFA may withhold Federal funds if either the agency or the contractor substantially fails to carry out the terms of the contract).

Comment: There is no indication of the criteria HCFA will use to determine noncompliance and no definition of "substantially". Although contracts usually include provisions for termination and for less severe sanctions when termination is not warranted, the threat of denial of FFP will force the agency to terminate as soon as a single violation occurs. This rule needs expansion and clarification.

Response: New § 434.70(b)(2) does not change previous policy. It merely sets forth directly (FFP may be denied if either party fails to carry out the terms of the contract) what previous § 431.591 stated indirectly (FFP is available only for periods during which the contract was in effect and the Administrator may determine that it was not in effect if either party failed to carry out the terms of the contract). This policy has been in effect since 1975 and there have been no problems with it. We believe it would be impractical and undesirable to define "substantially". To do so might unnecessarily restrict both the States and HCFA in dealing with real or alleged contractual violations. We assume that States will continue to include in their contracts any appropriate specific provisions regarding termination and lesser sanctions.

Section 434.71 Conditions of FFP: Prior approval.

(The Regional Administrator must certify that the contractor meets the State definition of HMO.)

Comment: The commenter recommends delegation of review

authority to HCFA generally, so that central office as well as regional office could certify, as it does currently.

Response: We believe the commenter is referring to a different type of certification, that is, certification for participation in Medicare under an HMO contract, which will continue unchanged. The new provision requiring the Regional Office to certify that the contractor meets the State definition of an HMO will go into effect with these regulations.

Other Changes

Paragraph (a) of § 434.71 required that, as a condition for FFP, the State agency obtain, from the Regional Administrator, prior approval of expenditures under any contract in excess of $100,000. Paragraph (a) has been deleted following recommendations by OMB and the Regulatory Reform Task Force. For those contracts that pertain to ADP equipment and services, prior approval will continue to be required as provided in 45 CFR Part 95, Subpart F.

Sections 435.212 and 435.326 (State option to continue Medicaid for up to 6 months after recipient enrolls in Federally qualified HMO).

Comment: HCFA should extend the provision to State-defined HMOs and PHPs.

Response: The law does not authorize continuation of Medicaid except for individuals enrolled in Federally qualified HMOs.

Section 447.361 Upper limits of payment: Risk contract. Payment may not exceed what it would cost the agency to provide the same scope of services to a defined number of recipients on a free-for-service (FFS) basis.

Comments: 1. HCFA should include a phrase to indicate that contractor's enrollees are compared to a comparable nonenrolled population group.

2. Indicate that the comparison is with projected FFS costs until actual FFS cost data are available.

3. Indicate that the State agency's costs include administrative costs.

Response: 1. A clarifying phrase has been added, using the term "actuarially equivalent".

2. The regulations would allow this method.

3. The phrase "cost to the agency" in the regulation includes program and administrative costs.

Section 447.362 Upper limits of payment: Nonrisk Contract. (The upper limit is the sum of (a) the FFS costs services actually furnished, plus (b) the net savings of administrative costs achieved by the agency when the contractor performs certain services that the agency has to perform itself when it pays on an FFS basis.)

Comments: 1. HCFA should delete (b) because it discourages prepayment plans from seeking risk contracts and does not provide an incentive for cost containment.

2. Are claims processing costs included in administrative costs?

Response: 1. State agency administrative costs are a legitimate element in the costs of purchasing services for recipients. Therefore, if a State saves on administrative costs by entering into nonrisk contracts with prepayment plans instead of purchasing those services on an FFS basis, we believe these savings should be recognized in calculating the Federal upper limit of payment for such contracts. (Naturally, this does not preclude a State from paying less than this limit or establishing a lower limit.) We do not believe that the inclusion of administrative cost savings in the upper limit discourages prepayment plans from entering into risk contracts, since the upper limit for risk contracts, as already noted, includes a State agency's administrative costs.

We believe that the State agencies will consider the advantages and disadvantages of risk and nonrisk contracts and, if they have a choice, select the type best suited to their particular situations. For risk contracts, the agency computes the upper limit on the basis of what it would pay (in the aggregate, on an FFS basis) for the same services, furnished to a population that is actuarially equivalent to the contractor's Medicaid enrollees. The chief incentives to accepting a risk contract and seeking to contain costs is that the contractor keeps any "savings" that are obtained, for instance, by achieving a lower utilization of inpatient services than that of FFS providers in the area. In the case of nonrisk contracts, since the limit is based on services actually furnished, there are no "savings".

2. Claims processing costs are part of the Medicaid agency's administrative costs.

Recommendations Concerning Provisions That Did Not Appear in the NPRM

Section 431.536 Health Care Information. (Requirement that the Contract provide for the HMO to advise enrollees on the proper use of services and how they can help maintain their own health.)

The NPRM proposed to delete this and several other requirements to provide States greater flexibility in running the Medicaid program.

Comment: One commenter recommended that this requirement be retained because it encourages development of programs to reduce costs of services and improve the health status of enrollees.

Response: We are fully aware of the value of health education but we do not believe there is a need to make it a Federal contract requirement. State agencies are free to do so, however.

Section 447.361 Upper limits of payment: Risk contract.

This section imposed 2 limits:

1. What agency would pay on a fee-for-service basis; and

2. What other third party payors pay for comparable services under comparable circumstances.

The NPRM proposed to delete the second limit as confusing and redundant because, in most instances, what others are paying is taken into account in establishing fee-for-service rates.

Comment: The commenter recommends retention of the second limit because, although States are free to enforce this policy, the realities of rate negotiation make it difficult to impose unless it is in the regulations.

Response: Because situations vary from State to State, we believe it is preferable for each State to determine whether it needs to impose a limit lower than the fee-for-service rates and take whatever legislative action is required.

Clarifying Change

Although we received no comments on § 434.57 (Limit payment to other providers), we have revised the section to be more like previous §§ 431.546 and 431.586, which it replaces. We believe that, as revised, § 434.57 more clearly expresses the limitation: that the Medicaid agency may not pay any provider other than the contractor, for services (other than emergency services) it furnished to an enrolled recipient if those services were available under the contract.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires us to prepare a regulatory analysis for any rule that is likely to have an annual impact of $100 million or more on the economy, cause a major increase in costs of prices or meet other threshholds specified in section 1(b) of the Order.

We have determined that these regulations will not have a significant economic impact. The elimination of requirements that are duplicative or unnecessary may permit some administrative economies, and more extensive use of risk-basis contracts with HMOs and PHPs would tend to reduce program costs.

Regulatory Flexibility Act of 1980 (Pub. L. 96-354)

This Act requires us to prepare and publish a regulatory flexibility analysis (RFA) for any regulations that will have a significant economic impact on a substantial number of small entities. There are currently approximately 42 State contracts with HMOs serving 294, 518 beneficiaries and 15 PHP contracts serving 69,423 beneficiaries. The changes made by these regulations will not affect participating entities except to reduce some requirements. To the extent that State Medicaid agencies take advantage of their new options, additional HMOs and PHPs, both large and small, will have opportunity to participate in the program. In view of the above, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of HMOs and PHPs. Accordingly, an RFA is not required.

REDESIGNATION TABLE FOR PART 431, SUBPART L

Part 431 section	Part 434 section
431.501	434.1.
431.502	434.2.
431.503	434.6(a).
431.504	434.6(b).
431.510	434.10.
431.511	434.12.
431.512	434.14.
431.520(a)	434.20(a).
431.520(b)	434.20(d)(2).
431.521	434.2.
431.522 Removed because of changes in the law.	
431.523	434.23.
431.524-431.526 Deleted to provide greater flexibility.	
431.527(a) Deleted as duplicative of Public Health Service requirements.	
431.527(b)	434.25.
431.528(a) Deleted as duplicative of Public Health Service requirements.	
431.528(b) & (c)	434.26.
431.529 Deleted as duplicative of § 434.6.	
431.530	434.27.
431.531	434.29.

REDESIGNATION TABLE FOR PART 431, SUBPART L—Continued

Part 431 section	Part 434 section
431.532(a) Deleted as duplicative of Public Health Service requirements.	
431.532(b)	434.30.
431.533	434.32.
431.534	434.34.
431.535	434.36.
431.536 Deleted to provide greater flexibility.	
431.537 Deleted as duplicative of 434.6.	
431.540	434.50.
431.541 Deleted as duplicative of Public Health Service requirements.	
431.542	434.52.
431.543	434.53.
431.544	434.55.
431.545 Deleted to provide greater flexibility.	
431.546	434.57.
431.547	434.59.
431.548	434.61.
431.549	434.63.
431.550(a)	434.65.
431.550(b)	434.22.
431.555-431.560 Deleted as duplicative of 431.520-431.526.	
431.565	434.23(b).
431.568-431.589 Deleted as duplicative of 431.527-431.550.	
431.591(a) and (b)	434.70.
431.591(c)	434.78.
431.592	434.72.
431.593	434.71.
431.594	434.74.
431.595	434.75.
431.596	434.76.
431.597 Deleted as unnecessary, given the reorganization and revision of these regulations.	

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) requires Federal agencies to seek the approval of the Executive Office of Management and Budget (EOMB) for any regulations that contain reporting and recordkeeping requirements that are subject to the statute.

In compliance with section 3507 of Pub. L. 96-511, we will be requesting EOMB approval of the following sections of these regulations which require the collection of information:

Sec.
434.6 General requirements for all contracts and subcontracts.
434.10 Contracts with fiscal agents.
434.12 Contracts with nonmedical institutions.
434.14 Contracts with health insuring organizations.
434.20 Basic rules.
434.23 Capitation fees.
434.25 Coverage and enrollment.
434.26 Composition of enrollment. (An annual report is required if 10 or more States request waivers.)
434.27 Termination of enrollment.
434.30 Emergency medical services.
434.32 Grievance procedures.
434.36 Marketing.
434.50 Proof of capability.
434.53 Periodic medical audits.
434.55 Approval of marketing plans, procedures, and materials.

We will publish a notice to indicate EOMB's decision on these requirements and the date they are to become effective.

List of Subjects

42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation (FFP), Grant-in-aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health center, Prepaid health plans, Privacy, Quality control, Reporting requirements.

42 CFR Part 434

Contracts, Federal financial participation (FFP), Health maintenance organizations (HMO), Prepaid health plans (PHPs).

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spending-down, Supplemental security income (SSI).

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: general, Payments: timely claims, Reimbursement, Rural areas.

42 CFR Chapter IV is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act [42 U.S.C. 1302], unless otherwise noted.

A. Part 431 is amended by removing and reserving Subpart L and amending the table of contents to reflect that change:

Subparts G-L—[Reserved]

B. The content of subpart L of Part 431 is revised and redesignated as a new Part 434, to read as follows:

PART 434—CONTRACTS

Subpart A—General Provisions

Sec.
434.1 Basis and scope.

Sec.

434.2 Definitions.
434.4 State plan requirement.
434.6 General requirements for all contracts and subcontracts.

Subpart B—Contracts With Fiscal Agents, Private Nonmedical Institutions, and Health Insuring Organizations

434.10 Contracts with fiscal agents.
434.12 Contracts with private nonmedical institutions.
434.14 Contracts with health insuring organizations.

Subpart C—Contracts with HMOs and PHPs: Contract Requirements

General Requirements

434.20 Basic rules.

Additional Requirements

434.21 Contracts that must meet additional requirements.
434.23 Capitation fees.
434.25 Coverage and enrollment.
434.26 Composition of enrollment.
434.27 Termination of enrollment.
434.29 Choice of health professional.
434.30 Emergency medical services.
434.32 Grievance procedures.
434.34 Quality assurance system.
434.36 Marketing.
434.38 Inspection and audit of HMO's financial records.

Subpart D—Contracts with HMOs and PHPs: Medicaid Agency Responsibilities

434.50 Proof of capability.
434.52 Furnishing of required services.
434.53 Periodic medical audits.
434.55 Approval of marketing plans, procedures and materials.
434.57 Limit on payment to other providers.
434.59 Continued service to recipients whose enrollment is terminated.
434.61 Computation of capitation fees.
434.63 Monitoring procedures.
434.65 Services included in the State plan but not covered by the contract.

Subpart E—Federal Financial Participation

434.70 Condition for FFP: Status of contract.
434.71 Condition for FFP: Prior approval.
434.72 Effect of final determination that a provisional status HMO is not an HMO.
434.74 Costs under risk-basis contracts.
434.75 Costs under norisk contracts.
434.76 Costs under fiscal agent contracts.
434.78 Right to reconsideration of disallowance of.

Authority: Sec. 1102 of the Social Security Act [42 U.S.C. 1302], unless otherwise noted.

Subpart A—General Provisions

§ 434.1 Basis and scope.

(a) *Basis:* This part is based on sections 1902(a)(4) and 1903(m) of the Act. Section 1902(a)(4) requires that the State plan provide for methods of administration that the Secretary finds necessary for proper and efficient operation of the plan. Section 1903(m)(1)(A) of the Act defines an HMO as an entity that meets the requirements of the Public Health Service (PHS) Act to be a Federally qualified HMO, or meets two specified requirements pertaining to accessibility of services and fiscal solvency. Section 1903(m)(2)(A) limits risk-basis contracts for specified health services to entities that meet the HMO definition of section 1903(m)(1)(A) and sets for certain enrollment and other requirements that these contracts must meet as a condition for FFP. Section 1903(m)(2)(B) exempts, from the limitations of section 1903(m)(2)(A), certain specified prepayment plans that are not HMOs.

(b) *Scope.* This part sets forth the requirements for contracts with certain organizations for furnishing Medicaid services or processing or paying Medicaid claims, or enchancing the agency's capability for effective administration of the program.

§ 434.2 Definitions.

As used in this part, unless the context indicates otherwise—

"Capitation fee" means the fee the agency pays periodically to a contractor for each recipient enrolled under a contract for the provision of medical services under the State plan, whether or not the recipient receives the services during the period covered by the fee.

"Clinical laboratory" means a facility that examines materials derived from the human body, for the purpose of providing information for the diagnosis, prevention or treatment of a disease or the assessment of a medical condition.

"Contractor" means any of the following entities that contract with the Medicaid agency under a State plan and in return for a payment, to process claims, to pay for or provide medical services, or to enhance the agency's capability for effective administration of the program:

(a) A fiscal agent.
(b) A health care project grant center.
(c) A private nonmedical institution.
(d) A health insuring organization.
(e) A health maintenance organization.
(f) A prepaid health plan.
(g) A clinical laboratory.
(h) A professional management service or consultant firm.

"Enrolled recipient" means an individual who is eligible for Medicaid and who enters into an agreement to receive services from a health maintenance organization or prepaid health plan that contracts with the agency under this part.

"Federally qualified HMO" means an HMO that has been determined by the Public Health Service (PHS) to be a qualified HMO under section 1310(d) of the PHS Act.

"Fiscal agent" means an entity that processes or pays vendor claims for the agency.

"Health care projects grant center" means an entity that—

(a) Is supported in whole or in part by Federal project grant financial assistance; and

(b) Provides or arranges for medical services to recipients.

"Health insuring organization" means an entity that—

(a) Pays for medical services provided to recipients in exchange for a premium or subscription changes paid by the agency; and

(b) Assumes an underwriting risk.

"Health maintenance organization (HMO)" means a public or private organization organized under State law that—

(a) Is a Federally qualified HMO; or

(b) Meets the State plan's definition of an HMO.

"Nonrisk" means that the contractor is not at financial risk for changes in the cost or utilization of services provided for in the payment rate agreed upon at the beginning of the contract period. Under a nonrisk contract, the State agency may make retroactive adjustment during and at the end of the contract period so that the contractor is reimbursed for costs actually incurred, subject to the upper limit of payment established in § 447.362 of this chapter, or any lower limit specified in the contract.

"Prepaid health plan (PHP)" means an entity that provides medical services to enrolled recipients, under contract with the Medicaid agency and on the basis of prepaid capitation fees, but does not qualify as an HMO.

"Private nonmedical institution" means an institution (such as a child-care facility or a maternity home) that—

(a) Is not, as a matter of regular business, a health insuring organization or a community health care center;

(b) Provides medical care to its residents through contracts or other arrangements with medical providers; and

(c) Receives capitation payments from the Medicaid agency, under a nonrisk contract, for its residents who are eligible for Medicaid.

"Professional management service or consultant firm" means a firm that performs management services such as auditing or staff training, or carries out studies or provides consultation aimed at improving State Medicaid operations, for example, with respect to

reimbursement formulas or accounting systems.

"Provisional status HMO" means an HMO that the State agency has determined is a provisional status Federally qualified HMO because more than 90 days have elapsed since the HMO applied to the PHS for Federal qualification and the PHS has not made a final determination. The provisional status continues until the PHS makes the final determination or the contract with the Medicaid agency is terminated, whichever occurs first.

"Risk" or "underwriting risk" means the possibility that a contractor may incur a loss because the cost of providing services may exceed the payments made by the agency to the contractor for services covered under the contract.

§ 434.4 State plan requirement.

If the State plan provides for contracts of the types covered by this part, the plan must also provide for meeting the applicable requirements of this part.

§ 434.6 General requirements for all contracts and subcontracts.

(a) *Contracts.* All contracts under this part must—

(1) Include provisions that define a sound and complete procurement contract, as required by 45 CFR Part 74, Appendix C;

(2) Identify the population covered by the contract;

(3) Specify any procedures for enrollment or reenrollment of the covered population;

(4) Specify the amount, duration, and scope of medical services to be provided or paid for;

(5) Provide that the agency and HHS may evaluate through inspection or other means, the quality, appropriateness and timeliness of services performed under the contract;

(6) Specify procedures and criteria for terminating the contract, including a requirement that the contractor promptly supply all information necessary for the reimbursement of any outstanding Medicaid claims;

(7) Provide that the contractor maintains an appropriate record system for services to enrolled recipients;

(8) Provide that the contractor safeguards information about recipients as required by Part 431, Subpart F of this chapter;

(9) Specify any activities to be performed by the contractor that are related to third party liability requirements in Part 433, Subpart D of this chapter;

(10) Specify which functions may be subcontracted; and

(11) Provide that any subcontracts meet the requirements of paragraph (b) of this section.

(b) *Subcontracts.* All subcontracts must be in writing and fulfill the requirements of this part that are appropriate to the service or activity delegated under the subcontract.

(c) *Continued responsibility of contractor.* No subcontract terminates the legal responsibility of the contractor to the agency to assure that all activities under the contract are carried out.

Subpart B—Contracts With Fiscal Agents, Private Nonmedical Institutions, and Health Insuring Organizations

§ 434.10 Contracts with fiscal agents.

Contracts with fiscal agents must—

(a) Meet the requirements of § 434.6;

(b) Include termination procedures that require the contractors to supply promptly all material necessary for continued operation of payment and related systems. This material includes—

(1) Computer programs;

(2) Data files;

(3) User and operation manuals, and other documentation;

(4) System and program documentation; and

(5) Training programs for Medicaid agency staff, their agents or designated representatives in the operation and maintenance of the system;

(c) Offer to the State one or both of the following options, if the fiscal agent or the fiscal agent's subcontractor has a proprietary right to material specified in paragraph (b) of this section:

(1) Purchasing the material; or

(2) Purchasing the use of the material through leasing or other means; and

(d) State that payment to providers will be made in accordance with Part 447 of this chapter.

§ 434.12 Contracts with private nonmedical institutions.

Contracts with private nonmedical institutions must—

(a) Meet the requirements of § 434.6;

(b) Specify a capitation fee based on the cost of the services provided, in accordance with the reimbursement requirements prescribed in Part 447 of this chapter; and

(c) Specify when the capitation fee must be paid.

§ 434.14 Contracts with health insuring organizations.

(a) Contracts with health insuring organizations must—

(1) Meet the requirements of § 434.6;

(2) Specify that the capitation fee will not exceed the limits set forth under Part 447 of this chapter;

(3) Specify that, except as permitted under paragraph (b) of this section, the capitation fee paid on behalf of each recipient may not be renegotiated—

(i) During the contract period if the contract is for 1 year or less; or

(ii) More often than annually if the contract period is for more than 1 year;

(4) Specify that the capitation fee will not include any amount for recoupment of any losses suffered by the contractor for risks assumed under the same contract or a prior contract with the agency;

(5) Specify that the contractor assumes at least part of the underwriting risk and:

(i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period will constitute full payment by the agency for the cost of medical services provided under the contract; and

(ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;

(6) Specify whether the contractor returns to the agency part of any savings remaining after allowable costs are deducted from the capitation fees and, if savings are returned, the apportionment between the agency and the contractor;

(7) Specify the extent, if any, to which the contractor may obtain reinsurance of a portion of the underwriting risk;

(8) Specify the actuarial basis for computation of the capitation fee.

(b) The capitation fee may be renegotiated more often than annually for recipients who are not enrolled at the time of renegotiation or if the renegotiation is required by changes in Federal or State law.

Subpart C—Contracts With HMOs and PHPs: Contract Requirements

General Requirements

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract, for the scope of services specified in § 434.21, only with an entity that—

(1) Is a Federally qualified HMO, including a provisional status Federally qualified HMO;

(2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section; or

(3) Is one of several entities identified in section 1903(m)(2)(B) (i), (ii) and (iii) of the Act, and considered as PHPs.

(b) *Entities eligible for other kinds of contracts.* A Medicaid agency may enter into a nonrisk contract, or a risk contract for a scope of services other than the scope specified in § 434.21, with any of the entities identified in paragraph (a) of this section, or with any other PHP.

(c) *State plan definition of HMO.* If the plan provides for risk contracts with entities that are not Federally qualified HMOs, for the services specified in § 434.21, the plan must include a State definition of an HMO. Under the definition, the HMO must meet at least the following requirements:

(1) Be organized primarily for the purpose of providing health care services.

(2) Make the services it provides to its Medicaid enrollees as accessible to them (in terms of timeliness, amount, duration, and scope) as those services are to nonenrolled Medicaid recipients within the area served by the HMO.

(3) Make provision, satisfactory to the Medicaid agency, against the risk of insolvency, and assure that Medicaid enrollees will not be liable for the HMO's debts if it does become insolvent.

(d) *Services that may be covered.* A contract with an HMO or a PHP may cover services to enrolled recipients that are not provided under the plan to nonenrolled recipients as permitted under § 440.250(g) of this chapter.

(e) *Requirements for all contracts.* For all contracts with HMOs or PHPs—

(1) The contract must meet the requirements of § 434.6;

(2) The Medicaid agency must carry out the responsibilities specified in Subpart D of this part; and

(3) The contract must provide that any cost-sharing requirements imposed for services furnished to recipients are in accordance with §§ 447.50 through 447.58 of this chapter.

Additional Requirements

§ 434.21 Contracts that must meet additional requirements.

(a) Unless otherwise indicated, the additional requirements set forth in §§ 434.23 through 434.36 must be met in all types of contracts with HMOs and PHPs:

(1) Nonrisk contracts;

(2) Risk comprehensive contracts; and

(3) Other risk contracts.

(b) Risk comprehensive contracts are risk contracts for furnishing comprehensive services, that is, inpatient hospital services and any of the following services, or any three or more of the following services or groups of services:

(1) Outpatient hospital services and rural health clinic services.

(2) Other laboratory and X-ray services.

(3) Skilled nursing facility (SNF) services, early and periodic screening, diagnosis and treatment (EPSDT), and family planning.

(4) Physicians' services.

(5) Home health services.

(c) Other risk contracts are risk contracts for a scope of services other than those specified in paragraph (b) of this section.

§ 434.23 Capitation fees.

The contract must specify—

(a) The actuarial basis for computation of the capitation fees; and

(b) That the capitation fees and any other payments provided for in the contract do not exceed the payment limits set forth in §§ 447.361 and 447.362 of this chapter.

§ 434.25 Coverage and enrollment.

(a) The contract must provide that—(1) There will be an open enrollment period doing which the HMO or PHP will accept individuals who are eligible to be covered under the contract—

(i) In the order in which they apply;

(ii) Without restriction, unless authorized by the Regional Administrator; and

(iii) Up to the limits set under the contract; and

(2) Enrollment is voluntary.

(b) Risk comprehensive contracts with HMOs must also provide that the HMO will not discriminate, against individuals eligible to be covered under contract, on the basis of health status or need for health services.

§ 434.26 Composition of enrollment.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, the contract must provide that Medicare beneficiaries and Medicaid recipients constitute less than 75 percent of the total enrollment of the HMO or PHP.

(b) *Exceptions.* (1) *Waiver for New HMOs with risk comprehensive contracts.* The requirement of paragraph (a) of this section may be waived for up to three years from the date the Regional Administrator determines the entity to be an HMO (as provided in § 434.71) if the HMO submits annual reports demonstrating to the Regional Administrator's satisfaction, that it is making continuous efforts and progress toward achieving compliance with paragraph (a) of this section.

(2) *Waiver for public HMOs with risk comprehensive contracts.* The Regional Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for an HMO that is owned or operated by a State, county or municipal health department or hospital, if—

(i) There are special circumstances that justify modification or waiver; and

(ii) The HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

(3) *Waiver for PHPs and for HMOs that have contracts other than risk comprehensive.* The Medicaid agency may waive the requirement of paragraph (a) of this section if the PHP or HMO requests waiver and shows good cause.

§ 434.27 Termination of enrollment.

(a) All HMO and PHP contracts must specify—

(1) The reasons for which the HMO or PHP may terminate a recipient's enrollment;

(2) That the HMO or PHP will not terminate enrollment because of an adverse change in the recipient's health; and

(3) That each termination by the HMO or PHP will be submitted for approval by the agency;

(b) An HMO risk comprehensive contract must specify—(1) That an HMO enrollee may terminate enrollment freely at any time, effective no later than the first day of the second month after the month in which he or she requests termination; and

(2) That the HMO will inform each recipient at the time of enrollment, of the right to terminate enrollment.

§ 434.29 Choice of health professional.

The contract must allow each enrolled recipient to choose his health professional in the HMO or the PHP to the extent possible and appropriate.

§ 434.30 Emergency medical service

If the contract covers emergency medical services, it must—

(a) Provide that all covered emergency services are available 24 hours a day and 7 days a week, either in the contractor's own facilities or through arrangements, approved by the agency, with other providers;

(b) Specify the circumstances under which the emergency services will be covered when furnished by a provider with which the contractor does not have arrangements, including at least the following circumstances:

(1) The services were needed immediately because of an injury or sudden illness; and

(2) The time required to reach the contractor's facilities, or the facilities of a provider with which the contractor has arrangements, would have meant risk of permanent damage to the recipient's health; and

(c) Specify whether it is the contractor, or the agency, that will make prompt payment for covered emergency services that are furnished by providers specified in paragraph (b) of this section.

§ 434.32 Grievance procedure.

The contract must provide for an internal grievance procedure that—

(a) Is approved in writing by the agency;

(b) Provides for prompt resolution; and

(c) Assures the participation of individuals with authority to require corrective action.

§ 434.34 Quality assurance system.

The contract must provide for an internal quality assurance system that:

(a) Is consistent with the utilization control requirement of Part 453 of this chapter;

(b) Provides for review by appropriate health professionals of the process followed in providing health services;

(c) Provides for systematic data collection of performance and patient results;

(d) Provides for interpretation of this data to the practioners; and

(e) Provides for making needed changes.

§ 434.36 Marketing.

The contract must provide that the HMO or PHP submits marketing plans, procedures, and materials to the agency for approval before using the plans.

§ 434.38 Inspection and audit of HMO's financial records.

A risk comprehensive contract with an HMO must provide that the agency and the Department may inspect and audit any financial records of the HMO or its subcontractors relating to the HMO's capacity to bear the risk of potential financial losses.

Subpart D—Contracts with HMOs and PHPs: Medicaid Agency Responsibilities

§ 434.50 Proof of HMO or PHP capability.

The agency must obtain from each contractor proof of—

(a) Financial responsibility, including proof of adequate protection against insolvency; and

(b) The contractor's ability to provide the servies under the contract efficiently, effectively, and economically.

§ 434.52 Furnishing of required services.

The agency must obtain assurances from each contractor that—

(a) It furnishes the health services required by enrolled recipients as promptly as is appropriate; and

(b) The services meet the agency's quality standards.

§ 434.53 Periodic medical audits.

(a) The agency must establish a system of periodic medical audits to insure that each contractor furnishes quality and accessible health care to enrolled recipients.

(b) The system of periodic medical audits must—

(1) Provide for audits conducted at least once a year for each contractor;

(2) Identify and collect management data for use by medical audit personnel; and

(3) Provide that the data includes—

(i) Reasons for enrollment and termination; and

(ii) Use of services.

§ 434.55 Approval of marketing plans, procedures, and materials.

(a) The agency must provide for a system for approval of the marketing plans, procedures, and materials submitted by the contractor under § 434.36.

(b) The requirements for approval must be in writing.

(c) The system must provide that the contractor not engage in marketing practices that mislead, confuse, or defraud either recipients or the agency.

§ 434.57 Limit on payment to other providers.

The agency must ensure that, except as specified in § 434.30(b) for emergency services, no payment is made for services furnished by a provider other than the contractor, if the services were available under the contract.

§ 434.59 Continued service to recipients whose enrollment is terminated.

The agency must arrange for Medicaid services without delay for any recipient whose enrollment is terminated, unless it is terminated because of ineligibility for Medicaid.

§ 434.61 Computation of capitation fees.

The agency must determine that the capitation fees and any other payments provided for in the contract are computed on an actuarially sound basis.

§ 434.63 Monitoring procedures.

The agency must have procedures to—

(a) Monitor enrollment and termination practices; and

(b) Insure proper implementation of the contractor's grievance procedures.

§ 434.65 Services included in the State plan but not covered by the contract.

If the contract does not cover all services available under the State plan, the agency must arrange for services not included to be available and accessible. This may be done by having the contractor refer enrolled recipients to other providers or by some other means.

Subpart E—Federal Financial Participation

§ 434.70 Condition for FFP: Status of contract.

(a) FFP is available in expenditures for payments to contractors only for the periods that the contract—

(1) Meets the requirements of this part;

(2) Meets the appropriate requirements of 45 CFR Part 74; and

(3) Is in effect.

(b) HCFA may withhold FFP for any period during which—

(1) The State fails to meet the State plan requirements of this part; or

(2) Either party to a contract substantially fails to carry out the terms of the contract.

§ 434.71 Condition for FFP: Prior approval.

FFP is not available in expenditures under an HMO contract unless the agency secured prior written notice from the Regional Office, indicating that the contractor meets the definition of an HMO.

§ 434.72 Effect of a final determination that a provisional status HMO is not an HMO.

(a) FFP is available in expenditures for payments to a provisional status HMO until the Public Health Service reaches a final determination that it is not a Federally qualified HMO.

(b) The Public Health Service's determination that the entity with provisional status is not an HMO is not considered final until—

(1) All administrative, but not judicial, appeal procedures are exhausted; or

(2) The time for requesting administrative review has lapsed without a request from the HMO.

§ 434.74 Costs under risk-basis contracts.

Under each contract in which the contractor assumes an underwriting risk, the total amount paid by the

agency for carrying out the provisions of the contract is a medical assistance cost.

§ 434.75 Costs under no-risk contracts.

Under each contract in which the contractor assumes no underwriting risk—

(a) The amount paid by the agency for furnishing medical services to eligible recipients is a medical assistance cost; and

(b) The amount paid by the agency for the contractor's performance of other functions is an administrative cost.

§ 434.76 Costs under fiscal agent contracts.

Under each contract with a fiscal agent—

(a) The amount paid to the provider of medical services is a medical assistance cost; and

(b) The amount paid to the contractor for performing the agreed-upon functions is an administrative cost.

§ 434.78 Right to reconsideration of disallowance.

A Medicaid agency dissatisfied with a disallowance of FFP under this subpart may request and will be granted reconsideration in accordance with 45 CFR Part 16.

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

Subpart A—Introduction, Definitions, and General Provisions

C. Section 435.3 is amended by reprinting the title and lead-in clause and adding, in numerical order, a new statutory citation of 1902(e)(2), to read as follows:

§ 435.3 Basis

This part implements the following sections of the Act, which state eligibility requirements and standards:

* * * * *

1902(e)(2) Minimum eligibility period for recipient enrolled in an HMO.

Subpart C—Options for Coverage as Categorically Needy

D. Subpart C of Part 435 is amended by adding a new § 435.212 to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a Federally qualified HMO (under a risk contract as specified in § 434.20(a)(1) of this chapter) and who becomes ineligible for Medicaid is deemed to continue to be eligible—

(a) For a period specified by the agency, ending no later than 6 months from the date of enrollment; but

(b) Only for benefits provided to him or her as an HMO enrollee.

Subpart D—Optional Coverage of the Medically Needy

E. Subpart D of Part 435 is amended by adding a new § 435.326 to read as follows:

§ 435.326 Individuals who would be ineligible if they were not enrolled in an HMO.

If the agency provides Medicaid to the categorically needy under § 435.212, it may provide Medicaid under the same rules to medically needy recipients who are enrolled in a Federally qualified HMO.

PART 447—PAYMENTS FOR SERVICES

The authority citation for Part 447 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

F. Part 447 is amended by revising § 447.361 and adding a new § 447.362, to read as follows:

Prepaid Capitation Plans

§ 447.361 Upper limits of payment: Risk contract.

Under a risk contract, Medicaid payments to the contractor, for a defined scope of services to be furnished to a defined number of recipients, may not exceed the cost to the agency of providing those same services on a fee-for-service basis, to an actuarially equivalent nonenrolled population group.

§ 447.362 Upper limits of payment: Nonrisk contract.

Under a nonrisk contract, Medicaid payments to the contractor may not exceed—

(a) What Medicaid would have paid, on a fee-for-service basis, for the services actually furnished to recipients: plus

(b) The net savings of administrative costs the Medicaid agency achieves by contracting with the plan instead of purchasing the services on a fee-for-service basis.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 22, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: November 2, 1983.

Margaret M. Heckler,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 80-523; RM-3543; RM-3780]

FM Broadcast Station in Helena, Montana

AGENCY: Federal Communications Commission.

ACTION: Dismissal of application for review settlement agreement, modification of licenses, and construction permits.

SUMMARY: This action dismisses an Application for Review, filed by Capital Investments, of the Commission's *Report and Order* assigning four Class C FM channels to Helena, Montana, and modifying the licenses of two Class A stations to specify operation on two of the four Class C channels. This action also approves a settlement agreement filed by Capital Investments Goodluck Broadcasting Inc. and KCAP Broadcasting, Inc. concerning the status of the new channel assignments.

EFFECTIVE DATE: January 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg or Mark N. Lipp, Policy and Rules Division, (202) 634-6530, Mass Media Bureau

or

Margaret Anthony, FM Branch, (202) 632-3954, Mass Media Bureau.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Helena, Montana) (BC Docket No. 80-523, RM-3543, RM-3780); modification of license broadcast station KCAP-FM (from channel 276A to 266) (Helena, Montana) (B PMH-821101BD); modification of license broadcast station KBLL-FM (from channel 221A to 258) (Helena, Montana) (B PH-830127AD); in re application of Capital Investments Helena, Montana for a new FM broadcast station on

channel 258 (B PH-830301AD); in re applications of Capital Investments, Helena, Montana (B PH-820324AN); Goodluck Broadcasting, Inc., Helena, Montana for a new FM broadcast station on channel 287 (B PH-820330AZ).

Adopted: October 31, 1983.
Released: November 18, 1983.

By the Chief, Mass Media Bureau.

1. Before the Commission is a "Joint Request for Approval of Agreement" filed August 31, 1983, by Capital Investments ("Capital"), Goodluck Broadcasting Inc. ("Goodluck"), and KCAP) Broadcasting, Inc. ("KCAP") requesting, among other things, that the Commission approve a settlement agreement and dismiss an Application for review by capital concerning the assignment of Class C FM channels to Helena, Montana.

2. This proceeding was initiated by a petition filed by KCAP, licensee of Station KCAP-FM (Channel 276A), Helena, Montana, proposing the assignment of Class C FM Channel 266 to Helena. The Broadcast (now Mass Media) Bureau issued a *Notice of Proposed Rule Making and Order to Show Cause*, 45 FR 58624, published September 4, 1980, proposing to substitute Class C Channel 266 for Channel 276A at Helena and to modify the license of Station KCAP-FM to specify operation on Class C Channel 266. In addition, the Bureau sought to further the Commission's policy against intermixture then in effect[1] by proposing to upgrade the only other Class A station at Helena, Station KBLL-FM (Channel 221A), to specify operation on Class C Channel 258. The comments produced two additional interests in Class C channels by licensees of AM stations in Helena. To accommodate all interests, the Bureau adopted a *Report and Order* (August 27, 1981; 46 FR 43169) assigning four Class C channels to Helena. In so doing, it also deleted the two Class A FM channels assigned there and modified the licenses of the stations operating on those Class A channels, KBLL-FM and KCAP-FM, to specify operation on Class C Channels 258 and 266, respectively. The other two Class C channels (281 and 287) were made available for application by other interested parties, including Capital, one of the AM licensees. In taking that action, the Bureau rejected Capital's request that all four Class C channels be opened for new applications as well as Capital's objections to the license modifications. Subsequent to the release of the *Report and Order*, additional applications were filed for the other two Class C channels (281 and 287).[2]

3. Capital, licensee of AM radio Station KMTX, Helena, filed a "Petition for Reconsideration," arguing that the Bureau's action in modifying the licenses of the Class A stations to specify operation on Class C Channels 258 and 266 violated its *Ashbacker*[3] rights to a comparative hearing. The Bureau denied Capital's petition and affirmed the *Report and Order*. Capital then filed its Application for Review requesting modification of that portion of the *Report and Order* which foreclosed it from applying for Class C Channels 258 and 266. The Commission voted to grant Capital's Application for Review at its May 27, 1983, Open Meeting (Item 3, Policy Agenda, Mimeo Nos. 33246 and 33247), but it did not then issue a *Memorandum Opinion and Order* reflecting this action.[4]

4. KCAP filed an "Expedited Petition" on June 28, 1983, subsequent to the Bureau's dismissal of Capital's petition for reconsideration. KCAP's petition, an informal request pursuant to Section 1.41 of the Commission's Rules, requested that the Commission not accept new applications and withhold the processing of pending applications for newly assigned FM channels at Helena until final resolution of the captioned docket and of any rule making growing out of that proceeding. The Commission has not ruled on KCAP's petition.

5. The proposed settlement agreement provides, in pertinent part, that the parties thereto will seek Commission action (a) dismissing Capital's Application for Review, (b) dismissing Goodluck's application for Channel 287, (c) dismissing Capital's application for Channel 258, (d) dismissing KCAP's "Expedited Petition," (e) granting Capital's application for Channel 287, (f) modifying KCAP's license to specify operation on Channel 266, (g) modifying the license of Holter Broadcasting Corporation ("Holter") to specify operation of Station KBLL-FM on Channel 258, and (h) approving the settlement agreement. It is further provided that, within five (5) days after favorable Commission action on these requests becomes final, Capital and KCAP will pay Goodluck Twenty-Five Thousand and Ten Thousand Dollars, respectively, or such lesser sums as the Commission may approve.

6. In support of their joint request, the parties assert that approval of the settlement will speed the provision of new and improved service to Helena. They further state that approval will eliminate burdens on the Commission and the parties.

7. Approval of this settlement agreement providing for the grant of a construction permit and modification of licenses as described above requires a finding (a) that Capital is qualified to be a Commission licensee and (b) that the modification requests of KCAP and Holter warrant approval. A review of the relevant applications reveals that they accord with the Commission's Rules and, therefore, warrant approval.

8. Section 311(c)(3) of the Communications Act of 1934, as amended, and § 73.3525 of the Commission's Rules, provide that the Commission may approve a settlement agreement upon a determination that approval is in the public interest and that no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.[5] Approval of the settlement agreement in this proceeding would expedite radio service to the Helena audience. Further, it would eliminate the necessity of additional proceedings before the Commission as well as possible appeals, thus sparing the applicants and the government the possibility of additional expenditures of resources. Therefore, approval would serve the public interest, convenience, and necessity. We have examined the agreement and the affidavits attached thereto, and we find that neither Capital's application for Channel 258 nor Goodluck's application for Channel 287 was filed for the purpose of reaching or carrying out the agreement.

9. Accordingly, it is ordered, that the "Joint Request for Approval of Agreement," as amended, filed August 31, 1983, by the Capital Investments, Goodluck Broadcasting Inc., and KCAP Broadcasting, Inc. is granted.

10. It is further ordered, that the application of Capital (File No. BPH-

[1] That policy has since been eliminated by Commission action in *Revision of FM Assignment Policies and Procedures* (BC Docket No. 80-130), 90 F.C.C. 2d 88 (1982).

[2] Eric John Myhre (BPH-811202AG), The First One Broadcast Group, Inc. (BPH-811105AB), and Old West Broadcasting, Inc. (BPH-820624BS) for Channel 281; and Capital (BPH-820324AN) and Goodluck (BPH-820330AZ) for Channel 287.

[3] *Ashbacker Radio Corporation* v. *F.C.C.*, 326 U.S. 327 (1945).

[4] As a result of the Commission's vote on this matter a separate proceeding has been initiated by a *Notice of Proposed Rule Making* on *Modification of FM and Television Station Licenses*, MM Docket No. 83-1148, adopted October 19, 1983, proposing to permit the modification of an existing license to a different class of channel, as in the *Helena* case, where other parties expressing an interest could apply for a comparable channel.

[5] See *Bison City Television 49 Limited Partnership*, 53 R.R. 2d 722 (Rev. Bd. 1983) and *Texas Television, Inc.*, 52 R.R. 2d 1268 (Rev. Bd. 1982), *aff'd* F.C.C. 83-95, released March 9, 1983.

820324AN) for a construction permit for Channel 287 is granted.

11. It is further ordered, that the application of KCAP (File No. BPMH-821101BD) for modification of license from Channel 276A to Channel 266 is granted.

12. It is further ordered, that Goodluck's application for a construction permit for Channel 287 (File No. BPH-820330AZ) is dismissed.

13. It is further ordered, that KCAP's "Expedited Petition" filed June 28, 1983, is dismissed.

14. It is further ordered, that the Application for Review, filed by Capital, is dismissed.

15. It is further ordered, that Holter's application (File No. BPH-830127AD) for modification of license from Channel 221A to Channel 258 is granted.

16. It is further ordered, that Capital's application for a construction permit for Channel 258 (File No. BPH-830301AD) is dismissed.

17. It is further ordered, that this proceeding is terminated.

18. For further information concerning this proceeding, contact Joel Rosenberg or Mark N. Lipp, Allocations Branch, (202) 634-6530 or Margaret Anthony, FM Branch, (202) 632-3954, Mass Media Bureau.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 83-31941 Filed 11-29-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 231

[FRA Docket No. SA-3, Notice No. 9]

Safety Applicance Standards; Extension of Compliance Date

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; extension of compliance date.

SUMMARY: This rule amends the final rule published on May 31, 1983 (48 FR 24083), which extended the compliance date from June 30, 1983 to December 31, 1983, for the removal of roof running boards from box and other house cars. It extends the compliance date six months until June 30, 1984, to permit sufficient time to complete a pending rulemaking in this docket (Notice No. 8) in which FRA proposes to eliminate this requirement.

EFFECTIVE DATE: This final rule becomes effective December 30, 1983.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Philip Olekszyk; Office of Safety, Federal Railroad Administration, Washington, D.C. 20590; Telephone (202) 426-0897.

Principal Attorney: Lawrence I. Wagner, Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590; Telephone (202) 426-8836.

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR) has filed a petition requesting that the FRA delete the first sentence of the Note in § 231.1 of the Safety Appliance Standards (49 CFR 231.1). The request seeks to eliminate in its entirety the requirement for the removal of roof running boards and the completion of related changes in associated ladders and handholds on all box and other house cars built on or before April 1, 1966, or under construction prior to that date and placed in service on or before October 1, 1966. The present compliance date for this requirement is December 31, 1983.

FRA responded to the AAR request by issuing a notice of proposed rulemaking on October 27, 1983 (48 FR 49666). That notice sets forth the relevant factual information concerning the history and background for this requirement. Since the current compliance date is December 31, 1983, and public comment on the proposed deletion may be filed as late as December 12, 1983, there will not be sufficient time for FRA to complete action on the proposal. FRA has decided, therefore, to extend the current compliance date six months to June 30, 1984. This extension will provide sufficient time for FRA to complete that rulemaking proceeding.

Notice and Public Procedure

Since this final rule merely extends for six months the compliance date of a regulation that is already in effect and imposes no additional burden on any person, FRA finds that notice and public procedure are not necessary. Also, to avoid the disruption of rail service and public inconvenience that would result if all box and other house cars that have not been so modified were to be removed from service on the current compliance date of January 1, 1983, FRA finds that notice and public procedure are impractical.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

It is estimated that fewer than 30,000 freight cars remain to be brought into compliance and that the cost of the retrofit program would total approximately $10 million. Since this final rule permits deferral of that cost, the economic impact will not be adverse. Although the final rule may affect some small entities that own or lease a minimal number of these cars, that economic impact will not be significant. Based on these facts, FRA certifies that the final rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The final rule will not have any environmental impact and does not involve directly or indirectly any information collection requirements.

List of Subjects in 49 CFR Part 231

Railroad safety.

The Final Rule

PART 231—[AMENDED]

In consideration of the foregoing, § 231.1 of the Part 231 of Title 49, Code of Federal Regulations, is amended, effective December 30, 1983, by revising the Note in that section to read as follows:

§ 231.1 Box and other house cars.

Note. After June 30, 1984, cars of this type built on or before April 1, 1966, or under construction prior to that date and placed in service before October 1, 1966, must be equipped as nearly as possible with the same complement of safety appliances, depending upon type, as specified in § 231.27 for box and other house cars without roof hatches, or in § 231.28 for box and other house cars with roof hatches.

Cars built after April 1, 1966, or under construction prior thereto and placed in service after October 1, 1966, must be equipped, depending upon type, as specified in § 231.27 for box and other house cars without roof hatches, or in § 231.28 for box and other house cars with roof hatches.

* * * * *

(Secs. 2, 4, and 6, 27 Stat. 531, as amended, secs. 1 and 3, 32 Stat. 943, as amended, secs. 1-6, 36 Stat. 943, as amended, sec. 6 (e) and (f), 80 Stat. 939; 45 U.S.C. 2, 4, 6, 8, 10, 11-16, 49 U.S.C. 1655; and section 1.49(c) of the Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c))

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

Thomas A. Till,

Deputy Administrator.

[FR Doc. 83-32043 Filed 11-29-83; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 48, No. 231
Wednesday, November 30, 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

Federal Crop Insurance Corporation

7 CFR Part 447

Popcorn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to issue a new Part 447 in Chapter IV of Title 7 of the Code of Federal Regulations prescribing procedures for insuring popcorn. The intended effect of this rule is to be responsive to producers growing corn for processing as popcorn who have expressed a desire for crop insurance protection. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments on this proposed rule must be submitted not later than January 30, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is September 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.)*, and other applicable law.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in Executive Order No. 12372 (July 14, 1982), was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

In the past, crop insurance has not been available to growers of corn for processing as popcorn. Such crop is exposed to similar hazards as other crops insured by FCIC. Following several meetings with both producers and processors, FCIC determined that such a program of crop insurance protection was needed. On May 24, 1983, the Board of Directors of FCIC approved Docket No. CI-Pc-84-1, authorizing FCIC to develop a program of popcorn insurance initially in Illinois, Indiana, Iowa, and Nebraska, effective for the 1984 and succeeding crop years, with expansion based on insuring experience into additional states at a later date. The regulations contained in this proposed rule are to become effective for the 1984 and succeeding crop years offering protection against crop damage or loss from adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, or volcanic eruption.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 447

Crop Insurance, Popcorn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.)*, the Federal Crop Insurance Corporation proposes to issue a new part in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 447 Popcorn Crop Insurance Regulations, effective for the 1984 and succeeding crop years, to read as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

447.1 Availability of popcorn insurance.
447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
447.3 OMB control numbers.
447.4 Creditors.
447.5 Good faith reliance on misrepresentation.
447.6 The contract.
447.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (1506, 1516).

Subpart—Regulations for the 1984 and Succeeding Crop Years

§ 447.1 Availability of popcorn insurance.

Insurance shall be offered under the provisions of this subpart on popcorn in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which popcorn insurance will be offered.

§ 447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for popcorn which will be included in the county actuarial table on file in service offices and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the acturial table for the crop year.

§ 447.3 OMB control numbers.

The Information collection requirements contained in these regulations (7 CFR Part 447) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 447.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortagage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided by the policy.

§ 447.5 Good faith reliance on misrepresentation.

Not withstanding any other provision of the popcorn insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believes to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured persons relied thereon in good faith and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 447.6 The contract

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the popcorn crop as provided in the policy. The contract shall consist of the application, the policy, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service office.

§ 447.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the popcorn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Popcorn contracts in effect for the 1984 crop year may be amended from year to year and are continuous unless terminated in accordance with their terms. A new application is not required by these regulations for subsequent crop years unless the policy is terminated.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, § 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Popcorn Insurance Policy for the 1984 and succeeding crop years, are as follows:

Department of Agriculture—Federal Crop Insurance Corporation

Popcorn Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. *Causes of Loss.* a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake; or
(7) Volcanic eruption;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good popcorn farming practices, or the grower provisions of the popcorn contract;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project;

(4) Damage resulting from frost or freeze after October 20;

(5) Not being timely harvested, unless we determined that, due to unusual weather conditions a substantial percentage of contracted acreage in the area was ready for harvest at the same time; or

(6) Any cause not specified in subsection 1a as an insured loss.

2. *Crop, Acreage and Share Insured.* a. the crop insured shall be popcorn which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be popcorn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured popcorn at the time of planting.

d. We do not insure any acreage:

(1) Of popcorn not grown under a contract executed with a processor before you report your acreage or excluded from the processor contract for, or during, the crop year;

(2) Which is destroyed and we determine it is practical to replant to popcorn and such acreage was not replanted;

(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as non irrigated by reporting it as insurable under section 3;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer popcorn;

(7) Planted to a type or variety of popcorn not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than popcorn; or

(9) Planted for the development or production of hybrid seed or planted for experimental purposes as we determine.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good popcorn irrigation practice at time of planting; and

(2) Any loss of production caused by failure to carry out a good popcorn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitations established under any Act of Congress, if we advise you of the limit prior to the planting.

g. An instrument in the form of a "lease" under which the insured grower retains possession of the land on which the popcorn is grown and which provides for delivery of the popcorn under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a contract under which the insured has the interest in the crop.

3. *Report of Acreage, Share, Yield and Practice.* You shall report on our form:

a. All the acreage of popcorn planted in the county in which you have a share;

b. The practice;

c. The most recent year's production records; and

d. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any popcorn planted in the county. This report shall be submitted annually before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. *Production Gurarantees, Coverage Levels and Amounts of Insurance.* a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year, as established by the actuarial table.

5. *Annual Premium.* a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production gurarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	126	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case you die;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. *Deductions for Debt.* Any unpaid amount due us may be deducted from any indemnity payable to your or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

7. *Insurance Period.* Insurance attaches when the popcorn is planted and ends at the earliest of:

(a) Total destruction of the popcorn;
(b) Combining, or picking;
(c) Final adjustment of a loss; or
(d) October 31 of the calendar year in which the popcorn is normally harvested.

8. *Notice of Damage or Loss.* a. In case of damage or probable loss:

(1) You must give us written notice if: (a) During the period before harvest, the popcorn on any unit is damaged and you decide not to further care for it or harvest any part of it;
(b) You want your consent to put the acreage to another use; or
(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the popcorn and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage has been put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of the unharvested popcorn (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit we must be given notice not later than 30 days after the earliest of:
(a) Total destruction of the popcorn on the unit;
(b) Harvest of the unit; or
(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the popcorn on which a replanting payment will be claimed until we give consent.

c. You must be given written consent by us before you destroy any of the popcorn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. *Claim for Indemnity* a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:
(1) Total destruction of the popcorn on the unit;
(2) Harvest of the unit; or
(3) October 31 of the crop year.

b. We shall not pay any indemnity unless you:
(1) Establish the total production of the popcorn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:
(1) Multiplying the insured acreage by the production guarantee;
(2) Subtracting therefrom the total production of popcorn to be counted (see section 9e);
(3) Multiplying the remainder by the price election; and
(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined by us, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.
(1) Mature popcorn production:
(a) Which otherwise is not eligible for quality adjustment shall be reduced .12 percent for each .1 percentage point of moisture in excess of 15.0 percent.
(b) Which, due to insurable causes, is not of merchantable popcorn quality and is rejected by the processor shall be adjusted by:
(i) Dividing the value per pound of the damaged popcorn, by the contract price per pound for undamaged popcorn; and
(ii) Multiplying the result by the number of pounds of such popcorn.
(2) Any production from yellow or white dent corn shall be counted as popcorn on a weight basis.
(3) Appraised production to be counted shall include:
(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good popcorn farming practices;
(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;
(c) Any appraised production on unharvested acreage.
(4) Any appraisal we have made on insured acreage and given written consent to be put to another use shall be considered as production unless such acreage:
(a) Is not put to another use before harvest of popcorn becomes general in the county;
(b) Is harvested, or
(c) Is further damaged by an insured cause before the acreage is put to another use.
(5) We may determine the amount of production of any unharvested popcorn on the basis of field appraisals conducted after the end of the insurance period.
(6) We will consider any loss of production resulting solely from acreage not being timely harvested as an uninsured cause of loss and an appraisal for uninsured causes shall be made against such acreage, unless we determined that due to unusual weather conditions, a substantial percentage of contracted acreage in the area was ready for harvest at the same time.
(7) When you have elected to exclude hail and fire as insured causes of loss and the popcorn is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78 "Request to Exclude Hail and Fire".
(8) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured popcorn replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.
(1) No replanting payment will be made on acreage:
(a) On which our appraisal exceeds 90 percent of the guarantee;
(b) Initially planted prior to the date we determine reasonable; or
(c) On which a replanting payment has been made during the current crop year.
(2) The replanting payment per acre will be your actual cost per acre for replanting, but shall not exceed 150 pounds multiplied by the price election times your share.

g. If the information reported by you results in a lower premium than the actual premium determined by us, the replanting payment shall be reduced proportionately.

h. You shall not abandon any acreage to us.

i. You cannot bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance and fire damage occurs during the insurance period and have not elected to exclude fire from the policy, we will be liable for loss due to fire only for the smaller of:
(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance, or
(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. *Concealment or Fraud.* We may void the contract on all crop insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due to us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year.

11. *Transfer of Right to Indemnity on Insured Share.* If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have the same rights and responsibilities provided by the contract.

12. *Assignment of Indemnity.* You may only assign to another party your right to an indemnity for the crop year with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. *Subrogation.* (Recovery of loss from a third party.) Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. *Records and Access to Farm.* You shall keep, for two years after the time of loss, records of the harvest, storage, shipment, sale, or other disposition of all of the crop produced on each unit including separate records showing the same information for production for any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. *Life of Contract: Cancellation and Termination.* a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided for in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any past due amount due us on this or any other contract with you is not paid on or before the termination date for the policy on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign the claim, or

(2) If deducted from payment under another program administered by U.S. Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. *Contract Changes.* We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. *Meaning of Terms.* For the purposes of popcorn crop insurance:

(a) "Actuarial table"means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding popcorn insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

(c) "Crop year" means the period within which the popcorn is normally grown and shall be designated by the calendar year in which the popcorn is normally harvested.

(d) "Harvest" means the completion of removing the grain from the stalk either by hand or machine.

(e) "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

(f) "Local Producing Area" means a portion of a county where insurable crops are grown and which borders on a county with a crop insurance program.

(g) "Insured" means the person who submitted the application accepted by us.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Replant" means performing the cultural practices necessary to replant insured acreage to popcorn.

(j) "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(k) "Tenant" means a person who rents land from another person for a share of the popcorn or a share of the proceeds therefrom.

(l) "Unit" means all insurable acreage of popcorn in the county on the date of planting for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the popcorn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interet therein.

18. *Descriptive Headings.* The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. *Determinations.* All determinations required by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. *Notices.* All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on October 24, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: November 21, 1983.

[FR Doc. 83-32015 Filed 11-29-83; 8:45 am]

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Agricultural Marketing Service

7 CFR Ch. IX

[Docket No. AO 83-1]

Kiwifruit Grown in California and Oregon

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on a proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order regulating the handling of kiwifruit grown in California and Oregon. Proposed provisions were submitted by the Kiwifruit Growers of California, Inc., and Mr. Al Caldwell, a Kelseyville, California, grower and have not received the approval of the Secretary of Agriculture. The proposed order would: Authorize grade, size, quality, pack, and container regulations for kiwifruit; and, provide for a local committee of 9 growers and a public member to administer the order. Funds to administer the order would be obtained from assessments levied on kiwifruit handlers.

DATES: The hearing will begin on February 6, 1984, at 9:00 a.m.

ADDRESS: The hearing will be held in Room 127, the Assembly Room of the California Department of Food and Agriculture, 1220 N Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS.

USDA, Washington, D.C. 20250; (202) 447–5975.

SUPPLEMENTARY INFORMATION: The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business.

The hearing is for the purpose of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of kiwifruit produced in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for kiwifruit; and

(d) Determining whether the proposed marketing agreement and order or any appropriate modification of them will tend to effectuate the declared policy of the act.

A press release was issued April 6, 1983, inviting public comment and offering copies of the proposal to any interested parties. Five comments were received. Four comments objected to the proposed establishment of a Federal marketing order for kiwifruit; and one favored the proposal. In addition, Al Caldwell, Kelseyville, California, submitted a number of specific proposals. All persons will be given an opportunity to testify at the hearing.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

The provisions of the proposed marketing order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by Agricultural Marketing Service.

List of Subjects in 7 CFR Chapter IX

Marketing agreement and order, Kiwifruit, California and Oregon.

The Kiwifruit Growers of California, Inc., proposed the following:

Part—Kiwifruit Grown in California and Oregon

Definitions

§ ———.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ ———.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ ———.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ ———.4 Production area.

"Production area" means the States of California and Oregon.

§ ———.5 Kiwifruit.

"Kiwifruit" means all varieties of Actinidia Chinensis, Planch., commonly called kiwifruit, or kiwi, grown in the production area.

§ ———.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of kiwifruit.

§ ———.7 *Fiscal period.*

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on August 1 of one year and ending on the last day of July of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ ———.8 *Committee.*

"Committee" means the Kiwifruit Administrative Committee established pursuant to § ——.20.

§ ———.9 *Grower.*

"Grower" is synonymous with producer and means any person who produces kiwifruit for the fresh market and who has a proprietary interest therein: *Provided,* That as used in § ———.20, the term "grower" shall include only those who have a proprietary interest in the production of at lease one acre or 145 bearing kiwifruit vines.

§ ———.10 *Handler.*

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting kiwifruit owned by another person) who handles kiwifruit.

§ ———.11 *Handle.*

"Handle" and ship are synonymous and mean to sell, consign, deliver, or transport kiwifruit, or to cause kiwifruit to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the sale of kiwifruit on the vine, the transportation within the production area of kiwifruit from the vineyard where grown to a packing facility located within such area for preparation for market, or the delivery of such kiwifruit to such packing facility for such preparation.

§ ———.12 *District.*

"District" means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § ———.31:

(a) "District 1" shall include the counties of Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Butte (with the exception of that area set aside as "District 2").

(b) "District 2" shall include the 95948 postal zip code area known as Gridley (and the surrounding area), incorporating the area located within the following boundaries: The area west of the Feather River; north of the Butte/Sutter county line; east of Pennington and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue.

(c) "District 3" shall include the counties of Yuba, Sutter, Sierra, Nevada, and Placer.

(d) "District 4" shall include the counties Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Marin, Napa, Solano, Yolo, Colusa and Glenn.

(e) "District 5" shall include the counties of San Joaquin, Calaveras, Tuolumne, Merced, Stanislaus, Contra Costa, El Dorado, Amador, Sacramento, Alpine, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito and Monterey.

(f) "District 6" shall include the counties of Mono, Mariposa, Madera, Fresno and Kings.

(g) "District 7" shall include the counties of Tulare and Inyo.

(h) "District 8" shall include the counties of San Luis Obispo, Santa Barbara, San Bernardino, Kern, Ventura,

Los Angeles, Orange, Riverside, San Diego and Imperial.

(i) "District 9" shall include the State of Oregon.

§ ———.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container, or any combination thereof.

§ ———.14 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of kiwifruit.

Administrative Body

§ ———.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of ten members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The ten member committee shall be made up of the following: One member (and alternate) from each of the eight California districts; one member (and alternate) from the State of Oregon; and one member (and alternate) shall be a public member. With the exception of the public member, all members and their respective alternates shall be growers or employees of growers.

§ ———.21 Term of office.

The term of office of each member and alternate member of the committee shall be two years, beginning in an even numbered year. The terms shall begin August 1 and end on the last day of July. Committee members and alternates may serve up to three consecutive two-year terms as a regular member. Each member and alternate shall serve until their respective successors are selected and have qualified.

§ ———.22 Nomination.

(a) *Initial Members.* Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee resonsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § ———.20.

(b) *Successor Members.* (1) The committee shall hold or cause to be held, not later than July 15 of each even numbered year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(2) Only growers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the nomination and election of nominees for members and their alternates.

(3) A particular grower, including employees of such grower, shall be eligible for membership as member or alternate member to fill only one position on the committee.

(c) The public member and alternate member shall be nominated by the committee. The committee shall prescribe, with the approval of the Secretary, procedures for the nomination of the public member and qualification requirements for such member.

§ ———.23 Selection.

From the nominations made pursuant to §———.22, or from other qualified persons, the Secretary shall select the ten members of the committee and an alternate for each such member.

§ ———.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in §———.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in §——— .20.

§ ———.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ ———.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§———.22 and ———.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in §———.20.

§ ———.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

§ ———.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ ———.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairperson and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least

once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling and marketing conditions with respect to kiwifruit;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in kiwifruit production within the districts and the production area.

§ ———.32 Procedure.

(a) Six members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ ———.50 through ———.55, of this part shall require at least six concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ ———.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

§ ———.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ ———.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § ———.41.

§ ———.41 Assessments.

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles kiwifruit during such periods shall pay to the committee, upon demand, assessments on all kiwifruit so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest charge at a rate prescribed by the committee with the approval of the Secretary.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all kiwifruit handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ ———.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his or her pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used: (i) To defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his or her possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Regulations

§ ———.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to –.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season Such marketing policy report shall contain information relative to:

(1) The estimated total production of kiwifruit within the production area;

(2) The expected general quality and size of kiwifruit in the production area and in other areas;

(3) The expected demand conditions for kiwifruit in different market outlets;

(4) The expected shipments of kiwifruit produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of kiwifruit; and

(8) The type of regulations expected to be recommended during the marketing season.

§———.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of kiwifruit in the manner provided in §———.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for kiwifruit during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§———.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of kiwifruit whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of kiwifruit grown in the production area;

(2) Limit the shipment of kiwifruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of kiwifruit.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§———.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to §———.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of kiwifruit in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§———.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§———.41, ———.52, ———.53 and ———.55 and the regulations issued thereunder, handle kiwifruit: (1) For consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§———.41, ———.52, ———.53 or ———.55, the handling of kiwifruit: (1) To designated market areas; (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects); or, (3) in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent kiwifruit handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle kiwifruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser of receiver that the kiwifruit will not be used for any purpose not authorized by this section.

§———.55 Inspection and certification.

(a) Whenever the handling of any variety of kiwifruit is regulated pursuant to §§———.52, or ———.53, each handler who handles kiwifruit shall, prior thereto, cause such kiwifruit to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for kiwifruit which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such kiwifruit. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Reports

§———.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of kiwifruit as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;
(4) The number and type of containers in the shipment;
(5) The quantities shipped, showing separately the variety, size and grade of the fruit;
(6) The destination;
(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the kiwifruit received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulation issued thereunder.

Miscellaneous Provisions

§ ———.61 Compliance.

(a) Except as provided in this part, no person shall handle kiwifruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle kiwifruit except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any kiwifruit held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of kiwifruit. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ ———.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ ———.63 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current marketing session, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of August subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to February 1 of the then current fiscal period. Upon recommendation of the committee received not later than April 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to July 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning May 15, 1990, and ending July 15, 1990, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum within the same period of every sixth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ ———.64 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee of the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ ———.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ ———.66 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ ———.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of

the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ ———.60 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States: (a) To exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ ———.69 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ ———.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

**§ ———.71 Counterparts.*

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

**§ ———.72 Additional parties.*

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

**§ ———.73 Order with marketing agreement.*

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of kiwifruit in the same manner as is provided for in this agreement.

Mr. Al Caldwell, Kelseyville, California, proposed changes to the proposal submitted by the Kiwifruit Growers California, Inc., as follows:

§ ———.22 Nomination.

This proposed section should be changed to provide that initial members nominated to serve on the administrative committee be nominated by growers in the respective districts, rather than by the Kiwifruit Growers of California, Inc. In addition, the proposed section should provide that only actual growers would be eligible for nomination to committee membership, and employees of growers should not be eligible for such nomination.

§ ———.41 Assessments.

This proposed section should indicate clearly that growers have some control over the assessment rate and the level of the committee's annual budget.

§ ———.52 Issuance of regulations.

The proposed section should indicate that any grade, size, quality and maturity regulations should not be changed from year to year; and there should be no authority to limit the amount of kiwifruit which may be placed on the market.

§ ———.53 Modification, suspension, or termination of regulations.

The proposed section should indicate that any grade, size, quality and maturity regulations cannot be changed during any given season.

Copies of this notice of hearing may be obtained from: William J. Doyle, Room 2532–S, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447–5975 or William Blackburn, P.O. Box 255507, Sacramento, California 95865; (916) 484–4855.

Signed at Washington, D.C., on November 21, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-31664 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1030

Proposed Temporary Revisions of Shipping Standards and Diversion Allowances; Milk in the Chicago Regional Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rules.

SUMMARY: This notice invites written comments on a proposal that the shipping requirements for pool supply plants under the Chicago Regional milk order should be decreased and the diversion allowances increased by a corresponding amount for the months of December 1983 through March 1984. Such action could help prevent uneconomic shipments of milk to the market and help maintain the pool status of producers who regularly supply the market. This action was requested by cooperative associations representing a majority of the producers supplying the market.

DATE: Comments are due no later than December 6, 1983.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of December 1983 through March 1984.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than seven days from the date of publication of this notice in the **Federal Register**. The period for filing comments is limited to enable the timely consideration of this matter since the proposed action would be applicable to milk shipments made during December 1983.

All written comments made pursuant to this matter will be made available for public inspection in the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statment of Consideration

The provisions proposed to be revised are the shipping percentage for supply plants and units of supply plants set forth in § 1030.7(b) and the diversion allowance set forth in § 1030.13(d)(3)

that are applicable during each month of December 1983 through March 1984 as follows:

Month/year	Shipping requirement		Diversion allowance	
	Present (percent)	Requested (percent)	Present (percent)	Requested (percent)
December 1983	20	18	80	82
January 1984	20	15	80	85
February 1984	20	15	80	85
March 1984	20	12	80	88

Pursuant to the provisions of § 1030.7(b)(5), the supply plant shipping percentages as set forth in 1030.7(b) and the diversion allowances set forth in § 1030.13(d)(3) may be increased or decreased by up to 15 percentage points during the months of September through March to encourage additional milk shipments to pool plants or to prevent uneconomic shipments.

The cooperative associations requesting the temporary revisions indicate that milk shipments from supply plants to fluid bottling handlers have decreased compared to last year because more direct-shipped milk from farms has been associated at their plants by these handlers. Hence, fewer shipments of milk have been required from supply plants this year. In addition, the associations said two Wisconsin fluid handlers have changed their operations so that one no longer qualifies with a distributing plant unit and the other handler continues to build a supply of direct-shipped milk. The associations said that these conditions have resulted in fewer needed shipments from supply plants.

Due to these reported changes in supply conditions for the market, it may be appropriate to reduce somewhat the pool supply plant shipping percentage and relax the diversion allowance for one or more months in the December 1983 through March 1984 period. Such action could prevent uneconomic movements of milk. Also, a reduction could assure that producers who have been regularly associated with the fluid market can continue to share in the pool proceeds of the market.

List of Subject in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: November 28, 1983

W. H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 83-32205 Filed 11-29-83; 10:36 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-83-01]

January 1981 and Entitlements Adjustments Notices; Extension of Comment Period

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of public proceeding and public hearing; extension of comment period.

SUMMARY: The Economic Regulatory Administration is extending until January 9, 1984 the written comment period for its public proceeding and public hearing entitled, "January 1981 and Entitlements Adjustments Notices."

DATES: Written comments must be received by January 9, 1984.

Public hearing: December 6, 1983, in Washington, D.C.

Requests to speak: by 4:30 p.m., November 29, 1983.

ADDRESSES: All comments and requests to speak at the public hearing should be identified by Docket No. ERA-R-83-01 and submitted to the Economic Regulatory Administration, Office of Management Services, Attn: Cindy Ford, Room GA-093, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

W. Mayo Lee, Office of General Counsel, Office of Regulatory Oversight and Fuels Conversion, U.S. Department of Energy, Room 6A-141, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6754

Jack Vandenberg, Office of the Administrator, Economic Regulatory Administration, U.S. Department of Energy, Room 5B-148, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2972

Cindy Ford [Hearing Procedures], Office of Management Services, Economic Regulatory Administration, U.S. Department of Energy, Room GA-093, 1000 Independence Avenue SW., (202) 252-4222.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) has received several requests to extend the written comment period for its public proceeding and public hearing notice entitled, "January 1981 and Entitlements Adjustments Notices." (48 FR 50824, November 3, 1983) In response to these requests ERA has decided to extend the written comment period until January 9, 1984.

The public hearing will be held on December 6, 1983 as previously scheduled.

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

Paul Michael,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 83-32014 Filed 11-29-83; 8:45 am]

BILLING CODE 6450-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34-20393; IC-13629; IA-891; File No. S7-1001]

Applications by Barred Individuals for Consent to Associate With a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Notice is hereby given that the Securities and Exchange Commission (the "Commission") is proposing a new Rule of Practice, 17 CFR 201.29 ("Rule 29"), that would set forth the procedures to be followed by certain individuals who are barred by Commission order, and thereafter submit an application to the Commission for consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, investment adviser, or investment company ("registered entities"). Currently, individuals who seek such consent do so pursuant to the guidelines announced in Securities Exchange Act Release No. 11267 (February 26, 1975) (the "75 Release").[1] The Commission is proposing Rule 29 in order to clarify policies and practices relating to such applications.

DATE: Comments must be received on or before December 30, 1983.

ADDRESS: Persons wishing to submit comments should file three copies with George A. Fitzsimmons, Secretary Securities and Exchange Commission, Washington, D.C. 20549. All comments should refer to File No. S7-1001 and will be available for public inspection and

[1] Also published as Investment Company Act Release No. 8689 (February 26, 1975) and Investment Advisers Act Release No. 438 (February 26, 1975).

copying at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Mary A. Binno (202) 272–2318, Philip L. Sbarbaro (202) 272–2240, or write the Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: A number of provisions of the Securities Exchange Act of 1934 ("Exchange Act") authorize the Commission to institute administrative proceedings and impose sanctions against a person associated with a broker-dealer or municipal securities dealer if such person has engaged in certain acts or omissions, has been convicted of particular offenses, or has been enjoined from specified acts.[2] Among the remedial sanctions which may be imposed against such persons is a bar from being associated with a broker-dealer or municipal securities dealer.[3] The Commission has similar disciplinary authority over members of, and participants in, self-regulatory organizations ("SROs"),[4] persons associated with investment advisers, and certain affiliated persons and prinicipal underwriters of registered investment companies.[5] When the Commission issues an order barring an individual from association with a registered entity, it is unlawful for that person to be, or to become, so associated without the consent of the Commission.[6]

In addition to direct regulation of registered entities by the Commission, the statutory scheme for regulation of the secutities industry contemplates self-regulation through SROs. For example, Section 6 of the Exchange Act requires a commitment by an exchange to discipline members for conduct inconsistent with "just and equitable principles of trade," the provisions of the Exchange Act and the rules and regulations thereunder, and the rules of the exchange.[7] The same approach applies to registered securities associations [8] and registered clearing agencies.[9] Additionally, a national securities exchange,[10] registered securities association,[11] or registered clearing agency,[12] may bar any person from association with a member of the SRO if that person is "subject to a statutory disqualification."[13] When an individual is "subject to a statutory disqualification", he or she must seek the consent of the SRO before associating with a member of that SRO.[14]

Most applicants, the majority of whom seek to associate with registered broker-dealers, apply for consent to associate with the assistance of their prospective employer through the employer's SRO. These applications are processed pursuant to Exchange Act Rule 19h–1 (17 CFR 240.19h–1) ("Rule 19h–1"). However, a number of applicants seek to become associated with an entity that is not a member of an SRO and must apply directly to the Commission, or, because of the wording of a Commission bar order, are permitted to apply directly to the Commission for consent to associate. With respect to applications made directly to the Commission, the '75 Release [15] sets forth the factors that the Commission considers in its evaluation.

Since publication of the '75 Release, a number of events have occurred that have caused the Commission to re-examine those matters that are the subject of the release.[16] As a result of this re-examination, the Commission is proposing Rule 29 under the Commission's Rule of Practice.[17] Rule 29 would set forth steps to be followed by certain individuals who submit applications directly to the Commission for consent to associate, or to change the terms and conditions of association.

Applications under Rule 29, if adopted, would include applications by individuals barred pursuant to Investment Company Act Section 9(b).[18] However, they should not be confused with applications under Rule 19h–1 or Investment Company Act Section 9(c).[19] Rule 19h–1 permits application by individuals subject to a broader range of disqualifications and specifies all appropriate procedures for applications thereunder.[20] Under the Rule 19h–1 process, the Commission reviews SRO determinations on such applications. Investment Company Act Section 9(c) applies only to persons who are ineligible to serve in certain positions in connection with investment companies by reason of certain misdemeanor or felony convictions or injunctions by a court of competent jurisdiction.[21]

I. Relief Obtained Through Applications for Consent

Once an individual is barred by a Commission order from the securities business or some aspect thereof, it is unlawful for him or her to become associated with a registered entity without the consent of the Commission.[22] Commission approval of an

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[2] *See, e.g.*, Exchange Act section 15(b)(6) and section 15B(c)(4), 15 U.S.C. 78*o*(b)(6) and 78*o*–4(c)(4), respectively.

[3] *Id.*

[4] As defined by Exchange Act section 3(a)(26), 15 U.S.C. 78c(a)(26), an SRO is any national securities exchange, registered securities association, or registered clearing agency.

[5] Exchange Act section 19(h), 15 U.S.C. 78s(h); Investment Advisers Act of 1940 ("Advisers Act") section 203(f), 15 U.S.C. 80b–3(f); Investment Company Act of 1940 ("Investment Company Act") section 9(b), 15 U.S.C. 80a–9(b).

[6] *See* note 2, *supra*.

[7] Exchange Act section 6(b) (1) and (5), 15 U.S.C. 78f(b) (1) and (5).

[8] Exchange Act section 15A (b) (2) and (6), 15 U.S.C. 78*o*–3(b) (2) and (6).

[9] Exchange Act section 17A (b)(4)(A), 15 U.S.C. 78q–1(b)(4)(A).

[10] Exchange Act section 6(c)(2), 15 U.S.C. 78f(c)(2).

[11] Exchange Act section 15A(g)(2), 15 U.S.C. 78*o*–3(g)(2).

[12] Exchange Act section 17A(b)(4)(A), 15 U.S.C. 78q–1(b)(4)(A).

[13] *See* Exchange Act section 3(a)(39), 15 U.S.C. 78c(a)(39); among other disqualifications, this section includes the existence of a present suspension or bar from association with SRO members, a Commission order barring the individual's association with a registered entity, and those situations described in Exchange Act section 15(b)(4) (B) through (E), 15 U.S.C. 78*o*(b)(4)(B)–(E). For purposes of determining whether a person is subject to a statutory disqualification under Exchange Act section 6(c)(2), 15 (A)(g)(2), or 17A(b)(4)(B), the term "Commission" in Exchange Act section 15(b)(4)(B) means "exchange", "association", or "clearing agency", respectively. *See* Exchange Act section 15(b)(10), 15 U.S.C. 78*o*(b)(10).

[14] *See* notes 9, 10 and 11, *supra*.

[15] *See* note 1, *supra*.

[16] During the last eight years, a number of Exchange Act sections and rules have been renumbered or superseded. On June 4, 1975, amendments to the Exchange Act expanded the Commission's jurisdiction over SROs and defined situations where an individual is subject to a statutory disqualification. Certain aspects of SRO authority have also changed. In 1977, the Commission adopted Rule 19h–1 which, among other things, sets forth procedures that SROs must utilize to notify the Commission of their determination to allow a member to employ a person subject to disqualification. In May, 1983, Congress passed H.R. 2851 abolishing the SECO program and requiring all broker-dealers transacting an over-the-counter securities association. The President has signed this bill and it becomes effective on December 8, 1983 (Pub. L. 98–38).

[17] 17 CFR 201.1–201.28.

[18] 15 U.S.C. 80a–9(b).

[19] 15 U.S.C. 80a–9(c).

[20] Rule 19h–1 permits application by individuals subject to an "applicable disqualification", defined to include not only Commission bar orders but also any conviction or injunction under Exchange Act section 15(b)(4) (B) or (C), 15 U.S.C. 78*o*(b)(4) (B) and (C), and a failure to meet certain qualification standards under Exchange Act Rule 15b8–2, 17 CFR 240.15b8–2, or Rule G–4 of the Municipal Securities Rulemaking Board. *See* Rule 19h–1(f).

[21] Any person who seeks an exemption from the provisions of Investment Company Act section 9(a), 15 U.S.C. 80a–9(a), should continue to file an application pursuant to Investment Company Act section 9(c), 15 U.S.C. 80a–9(c). Investment Company Act Rules 2 and 5, 17 CFR 270.0–2 and 0–5, set forth the procedures with respect to such applications.

[22] Exchange Act Section 15(b)(6), 15 U.S.C. 78*o*(b)(6); Exchange Act 15B(c)(4), 15 U.S.C. § 78*o* 4(c)(4); Investment Advisers Act section 203(f), 15 U.S.C. 80b–3(f); *see also* Investment Company Act § 9, 15 U.S.C. 80a–9.

application for consent to associate, however, does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect. [23] Accordingly, if the individual does not comply with the terms or conditions under which his or her application was approved, the individual is in violation of the Commission's order and the Commission may take appropriate enforcement action. [24]

Commission approval of an application for consent to associate, or to change the terms and conditions of association, with a registered entity should not be construed to be consent by an SRO for the individual to associate with one of its members. That consent must be given by the particular SRO.

II. Procedural Channels for Individuals Barred by Commission Order

For those barred individuals who seek to associate with a broker-dealer that is a member of an SRO, an application for consent to associate, or to change the terms and conditions of association, must be submitted by the individual's prospective employer to the employer's SRO. In those cases where the SRO gives its consent, and the Commission does not veto that action pursuant to the provisions of Rule 19h–1, the Commission gives: (a) consent to the SRO to permit the individual to associate with a member of the SRO, notwithstanding his or her disqualification; and (b) consent to the individual to associate with an entity registered with the Commission.

An application submitted by the individual's prospective employer to the employer's SRO, and reviewed by the Commission pursuant to Rule 19h–1, eliminates the necessity for two separate applications. [25] The Commission, however, has recognized an exception and permitted direct application in certain cases. Direct application to the Commission *may* be utilized where the individual has been barred by Commission order and seeks to associate, or to change the terms and conditions of association, with a broker-dealer that is a member of an SRO, provided that the order states that application may be made "to the Commission" after a specified period of time. If Rule 29 is adopted, individuals subject to such orders would be able to elect either: (a) to have the prospective employer apply to the employer's SRO, subject to Commission review under Rule 19h–1; or (b) to apply directly to the Commission pursuant to Rule 29 and, if the Commission approves the application, thereafter to the appropriate SRO. Application pursuant to the Rule 19h–1 process in the first instance would eliminate the necessity for two separate applications which require substantially the same information.

For those barred individuals who seek to associate with an investment adviser, investment company, or a broker-dealer that is not a member of an SRO, [26] applications currently submitted pursuant to the guidelines of the '75 Release would be submitted directly to the Commission pursuant to Rule 29.

As shown by the chart below, the procedural channels available to applicants barred by Commission order to obtain the necessary Commission consent depend upon (a) the entity with which the applicant seeks to become associated; and (b) the terms of the order imposing the bar.

Entity with which applicant seeks to associate	Terms of commission order	Where to apply
Broker-dealer that is a member of an SRO*.	Barred by the Commission from association with broker-dealer, with proviso that application may be made "to the Commission" after a specified period of time.	Either SRO or Commission.**
	Any other bar by the Commission from association with broker-dealer.	SRO.
Investment adviser, investment company or municipal securities dealer.	Barred by Commission from association with investment adviser, investment company or municipal securities dealer.	Commission.

* Those individuals who have been barred by an SRO (rather than the Commission) from associating with members of the SRO and who seek to associate with a SECO broker-dealer currently must apply for consent pursuant to Exchange Act Rule 15b8–2, 17 CFR 240.15b8–2. With the elimination of the SECO broker-dealer program by Congress, effective December 6, 1983, the Commission will rescind Rule 15b8–2.

** As stated earlier in this release, Commission consent to associate with a registered entity pursuant to Rule 29 would not include consent by an SRO for the individual to associate with one of its members. That consent must be obtained from the appropriate SRO. Accordingly, an application to the Commission pursuant to Rule 29, if approved, would have to be followed by an application to the appropriate SRO to obtain the SRO's consent to associate.

III. Factors Relevant to Applications for Consent

Rule 29, like the '75 Release, would set forth factors relevant to Commission consideration of applications for consent to associate. [27] However, Rule 29 would contain three changes in the factors referred to in the '75 Release, in order to reflect actual practice and to parallel more closely the information required in similar situations. [28]

First, the applicant's conduct since the issuance of the bar would be addressed in response to two separate items. Rule 29 would make it clear that applicants must adequately discuss both their compliance with the order imposing the bar and their employment history.

Second, instead of the "types and nature of the applicant's prospective duties", as called for by the '75 Release, Rule 29 would call for the capacity or position in which the applicant proposes to be associated. In addition, as a separate factor, the applicant would be required to state "the manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant." [29]

Third, applicants would be required to state any relevant courses, seminars, examinations or other actions completed subsequent to imposition of the bar to prepare for return to the securities business or an aspect thereof. This would be particularly important in those cases where the violation was

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[23] Commission approval of an application is limited to association in a specified capacity with a particular registered entity and is subject to specific terms and conditions. If any of the individual's duties or responsibilities vary materially from the terms and conditions under which the application was approved, or if he or she seeks to become associated with another registered entity, a new application must be submitted.

[24] *See, e.g.*, Exchange Act section 21(e), 15 U.S.C. 78u(e); Advisers Act section 209(e), 15 U.S.C. 80b–9(e); Investment Company Act section 42 (e), 15 U.S.C. 80a–41(e).

[25] The Commission has previously expressed a preference, where both it and the SROs have authority, for having applications for consent to associate presented first to the SRO concerned. *See* Securities Exchange Act Release No. 18278 (November 20, 1981).

[26] *See* note (*) to chart below and note 21, *supra*.

[27] The '75 Release referred to six such factors: (1) the period of time elapsed since entry of the bar; (2) the nature of the findings that resulted in the bar; (3) the applicant's attempts to undo any injury resulting from his prior misconduct; (4) the applicant's compliance with the order subsequent to its entry and the nature of the applicant's overall conduct during the period; (5) the type and nature of the applicant's prospective duties; (6) any other pertinent factors.

[28] *See, e.g.*, Rule 19h–1(e).

[29] Similar to the requirements of Rule 19h–1, Rule 29 also would require that each application be accompanied by a written statement by the proposed employer that describes (i) the terms and conditions of employment and supervision to be exercised over or by such applicant; (ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant; (iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant wil be employed; and (iv) the names of any other associated persons in the office in which the applicant will be employed, if any, who have previously been barred by the Commission, stating whether they are to be supervised by the applicant. Like Rule 19h–1, the applicant also would be required to include a copy of a completed Form U–4. Similar information would be required where the applicant seeks consent to associate with an investment adviser or bank municipal securities dealer.

occasioned in part by the individual's lack of knowledge, training or experience.

Subparagraph (8) of Rule 29 would provide that applications made pursuant to the rule must address any other information material to the application. In addition to the factors set forth in paragraph (d) of Rule 29, the Commission would continue to consider the nature of the findings that resulted in the applicant's bar in determining whether the proposed association is consistent with the public interest.

IV. Procedural Considerations

In addition to clarifying the factors relevant to Commission consideration of applications for consent to associate, Rule 29 would standardize the contents and specify the procedures for processing all such applications. Paragraph (b) of the proposed rule would require the submission of certain information and exhibits. It would also require that each application be supported by an affidavit, manually signed by the applicant, which addresses the factors set forth in paragraph (d) of the proposed rule.

The proposed rule would also provide for notification to an applicant by the staff in the event an adverse recommendation to the Commission is to be proposed. Paragraph (e) of the proposed rule states that the applicant shall be provided with a written statement of the reasons for such recommendation and that the applicant would then have 30 days to submit a written statement in response.

V. Statutory Authority

The Commission, acting pursuant to Sections 15, 15B, 19, 23 (a) and (c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o* 78s, 78w (a) and (c)); Sections 203 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3, 80b–11); and Sections 9 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–9, 80a–38), proposes to adopt the new rule of practice in Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

VI. Regulatory Flexibility Act Certification

Section 603(a) [30] of the Administrative Procedure Act, [31] as amended by the Regulatory Flexibility Act (the "Flexibility Act"), [32] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on "small entities." [33] Section 605(b) of the Flexibility Act, however, specifically exempts from that requirement any proposed rule, or proposed rule amendment for which the Chairman of the Commission certifies that, if adopted, would not have a "significant economic impact on a substantial number of small entities."

The proposed rule applies only to a small number of natural persons, not defined as small entities under the Flexibility Act or the Commission's rules, who may elect or are required to apply under the proposed rule for Commission consent to associate and to their prospective employers. The staff estimates that ten to fifteen individuals per year apply directly to the Commission under the '75 Release. We do not believe that the number of individuals who would apply under the rule would substantially increase. Therefore, the number of small registered entities that would be effected by the rule would not be substantial, nor would the rule have any significant economic impact on them in any event. For this reason, the Chairman of the Commission has certified, pursuant to Section 605(b) of the Flexibility Act, that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Investigations, securities.

VII. Text of Proposed Rule

The Commission proposes to amend 17 CFR Part 201 by adding § 201.29 to Subpart A to read as follows:

PART 201—RULES OF PRACTICE

§ 201.29 Applications by barred individuals for consent to associate with registered brokers, dealers, municipal securities dealers, investment advisers or investment companies.

Preliminary Note.—This rule governs applications by certain persons, barred by Commission order from association with entities registered with the Commission, for consent to become so associated. Applications made pursuant to this rule must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the issue of the public interest, in meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment, are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and, thus, is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar in determining whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules of Informal and Other Procedures. Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceedings." Consistent with rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to re-argue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, investment adviser, or investment company ("registered entities") may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

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[30] 5 U.S.C. 603(a).

[31] 5 U.S.C. 551, *et seq.*

[32] Pub. L. No. 96–354 (September 19, 1980), 94 Stat. 1164, reprinted in (1980) U.S. Code Cong. & Ad. News 1169.

[33] Although Section 601(b) of the Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission published final definitions of the terms "small business" and "small organization" in Securities Act Release No. 6380 (February 4, 1982) (47 FR 5215).

(1) Such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) The order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of application.* Each application shall be supported by an affidavit, manually signed by the applicant, which addresses the factors set forth in paragraph (d) of this rule. One original and four copies of the application shall be filed with the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Each application shall include as exhibits: (1) a copy of the Commission order imposing the bar; (2) an undertaking by the applicant immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes materially false or misleading; (3) a copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer; (4) a copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer; (5) the information required by Form ADV with respect to the applicant, where the applicant's proposed association is with an investment adviser; and (6) a written statement by the proposed employer that describes (i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant; (ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant; (iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and (iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be addressed.* The affidavit required by paragraph (b) shall address each of the following:

(1) The time period which has elapsed since the imposition of the bar;

(2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) The applicant's compliance with the order imposing the bar;

(4) The applicant's employment during the period subsequent to imposition of the bar;

(5) The capacity or position in which the applicant proposes to be associated;

(6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) Any other information material to the application.

(e) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent applications.* The Commission will not consider any application submitted pursuant to this rule, if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

By the Commission.

November 18, 1983.

Shirley E. Hollis,

Assistant 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 proposed Rule of Practice 29 set forth in Securities Exchange Act Release No. 20393, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed rule applies only to a small number of natural persons, not defined as small entities under the Act or the Commission's rules, who may elect or are required to apply under the proposed rule for Commission consent to associate with a registered broker, dealer, municipal securities dealer, investment adviser or investment company and to their prospective employers. The staff estimates that ten to fifteen individuals per year apply directly to the Commission under the current guidelines. The Commission's staff does not believe that the number of individuals who would apply under the rule would be substantially greater. Therefore, the number of small registered brokers, dealers, municipal securities dealers, investment advisers or investment companies that would be effected by the rule would not be substantial, nor would the rule have any significant impact on them in any event.

Dated: November 18, 1983.

John S. R. Shad,

Chairman.

[FR Doc. 83-31701 Filed 11-29-83; 8:45 am]

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17 CFR Part 270

[Release No. IC-13632; S7-1004]

Request for Comments on Issues Arising Under the Investment Company Act of 1940 Relating to Flexible Premium Variable Life Insurance

AGENCY: Securities and Exchange Commission.

ACTION: Request for written comments.

SUMMARY: The Commission is requesting written comments on issues raised by a petition for rulemaking relating to a new type of insurance product known as flexible premium variable life insurance. Petitioner, an insurance industry representative, has asked that the Commission adopt a rule which would exempt separate accounts offering this product from various provisions of the Investment Company Act of 1940. To aid public discussion of the issues raised under the Act, the Commission is publishing petitioner's suggested exemptive rule. However, the Commission takes no position on the merits of the suggested rule.

DATE: Comments must be received on or before February 14, 1984.

ADDRESSES: All communications on this matter should be sent, in triplicate, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Such communications should refer to File No. S7–1004 and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Special Counsel (202) 272–2061, or Jay S. Neuman, Attorney (202) 272–2067, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On June 29, 1983, as supplemented on September 15, 1983, the Commission received a rulemaking petition (File No. 4–225) [1]

[1] The petition was submitted under section 553(e) of the Administrative Procedure Act [5 U.S.C. 553(e)] ("APA") and rule 4(a) of the Commission's Rules of Practice [17 CFR 201.4(a)].

from the American Council of Life Insurance ("ACLI" or "Petitioner") [2] relating to flexible premium variable life insurance ("flexible life"). Flexible life is a new type of life insurance product that will be funded by separate accounts and will provide for flexible premiums and death benefits. The petition urges the Commission to adopt the suggested rule,[3] as a companion to rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] ("Act"). Rule 6e–2 provides exemptive relief for separate accounts offering traditional scheduled premium variable life insurance ("traditional variable life").[4]

I. Petitioner's Suggested Exemptive Rule

Petitioner's rule would provide extensive exemptions from various provisions of the Act and the rules thereunder to any insurance company separate account offering flexible life. The relief also would be available to the investment adviser, principal underwriter, and depositor for the separate account. Similar to rule 6e–2 for traditional variable life,[5] the suggested rule would provide conditional exemptions from the following provisions of the Act:

(1) Section 9(a) [15 U.S.C. 80a–9(a)], which makes certain persons ineligible to serve in certain capacities with a registered investment company. Like Rule 6e–2, the suggested rule would limit these restrictions to life insurer personnel participating directly in variable life transactions and operations;

(2) Sections 13(a) and 15 (a), (b), and (c) [15 U.S.C. 80a–13(a) and 80a–15(a), 80a–5(b), and 80a–15(c)], which provides for shareholder authorization for changes in an investment company's investment policies, investment adviser, or principal underwriter, to permit some such changes to be made or disapproved by the life insurer of by state insurance authorities. These exemptions are intended to assure the solvency of the life insurers and preformance of its contractual obligations by enabling it or an insurance regulatory authority to act when certain shareholder proposals reasonably could be expected to increase the life insurer's risks;

(3) Section 14(a) [15 U.S.C. 80a–14(a)], which generally requires minimum initial funding for investment companies. This relief is conditioned on the sponsoring life insurer meeting certain capital and surplus requirements;

(4) Section 15(a), 16(a), [15 U.S.C. 80a–16(a)] and 32(a) [15 U.S.C. 80a–31(a)], which require, among other things, an investment company's initial shareholders to approve its investment advisory agreement; elect a board of directors; and ratify the selection of an independent public accountant. These exemptions recognize that the exemption from section 14(a) would leave the investment company without initial shareholders who could vote upon these matters, and provide for shareholder votes at the first shareholders' meeting following the effective date of the flexible life registration statement;

(5) Section 17(f) [15 U.S.C. 80a–17(f)], which limits the types of persons who may have custody of the securities and similiar investments of a management investment company, to allow the life insurer to act as custodian under certain conditions. In addition, the suggested rule would permit custodianship by the life insurer in reliance on the provisions of rule 17f–2 [17 CFR 270.17f–2], modified as necessary for compliance with applicable insurance laws and regulations or with established procedures of the life insurer. This would permit, for example, officers or employees of the lifer insurer (rather than of the investment company) to have access to the assets and would permit verification of the assets by an independent public accountant retained by the life insurer (rather than by the investment company);

(6) Section 18(i) [15 U.S.C. 80a–18(i)], which requires that every share of stock issued by a management investment company be voting stock and have voting rights equal with every other voting stock, to permit allocation of votes on the basis of cash value of flexible life contracts, and to permit the actions contemplated by the exemption from sections 13(a) and 15 (a), (b), and (c) described above;

(7) Section 19 [15 U.S.C. 80a–19], which governs dividend payments by investment companies, in recognition of the fact that "participating" variable life contracts will not pay "dividends" in the sense in which this term is used in this section;

(8) Sections 22(d) [15 U.S.C. 80a–22(d)], 22(e) [15 U.S.C. 80a–22(e)], 27(c)(1) [15 U.S.C. 80a–27(c)(1)], and rule 22c–1 [17 CFR 270.22c–1], which generally concern the pricing and redemption rights of "redeemable securities," to accommodate the traditional manner in which life insurance premiums are calculated and benefits are determined and other aspects preculiar to life insurance contracts, such as policy loans and transfers of premiums. In this regard, the suggested rule would differ from rule 6e–2 to reflect changes in rule 22c–1, and to accommodate arrangements where deductions from a policy's cash value (*e.g.*, to pay costs of insurance benefits and administrative expenses) are not made on a daily basis. In addition, because death benefits might not vary daily under certain flexible life options, the suggested rule would eliminate the need to calculate death benefits on such days; and

(9) Section 27 [15 U.S.C. 80a–27], which prescribes various requirements applicable to periodic payment plan certificates relating to the amount and manner of imposing sales load, refund rights, redeemability, and custodianship of payments for such certificates.

The suggested rule also would provide exemptive relief not fund in rule 6e–2. Most significant is the proposed exemption from the requirement of section 27 of the Act that sales load on a flexible life policy not exceed nine percent of premium payments to be made thereon. Petitioner states that because a flexible life policy generally will not require scheduled premium payments, this additional relief is necessary in order to permit insurance companies to demonstrate compliance with the sales load requirements of section 27 on a prospective basis.

The suggested rule keys this aditional exemptive relief to a "guideline annual premium." This concept is defined as the level annual premium, payable to the highest attained age at which a premium may be paid, that would provide the future benefits under the policy based on (i) the 1958 Commissioners' Standard Ordinary Mortality Table, (ii) an assumed interest rate of four percent, and (iii) the expenses specified in the policy.[6] In short, Petitioner states, the guideline annual premium equals the annual premium necessary to keep the policy in force for the life of the insured. The suggested rule provides relief generally if the sales load charged does not exceed nine percent of the sum of the guideline annual premiums payable during the policy period (which is the lesser of twenty years or the insured's actuarially determined life expectancy).

The ability of a flexible life policyholder to increase the level of insurance benefits provided by an existing policy, a feature not found in a traditional variable life policy, also raises questions of compliance with the sales load requirements of section 27. The suggested rule affords relief from section 27 in this context provided generally that the sales load charged on any increase does not exceed the amount of sales load that could have been charged had the policyholder

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[2] Petitioner states that it is the principal trade association for life insurance companies and has a membership of 573 stock and mutual life insurers representing approximately 95 percent of the assets of all United States life insurance companies.

[3] Petitioner states that the Commission's authority to adopt an exemptive rule is found primarily in section 6(c) of the Act [15 U.S.C. 80a–6(c)], and also section 6(e) and 38(a) of the Act [15 U.S.C. 80a–6(e) and 80a–37(a)].

[4] Traditional variable life policies are scheduled (*i.e.*, fixed) premium policies that guarantee a minimum death benefit but, unlike conventional whole life insurance, also provide for a variable death benefit (in excess of the guaranteed minimum) and cash value that reflect the investment experience of one or more segregated asset accounts or "separate accounts" of the sponsoring insurance company.

[5] The releases proposing and adopting rule 6e–2 (Investment Company Act Rel. Nos. 9104 (Dec. 30, 1975) [41 FR 2256, Jan. 15, 1976] and 9482 (Oct. 18, 1976) [41 FR 47023, Oct. 27, 1976], respectively) discuss in detail the exemptions provided.

[6] Petitioner states that the guideline annual premium concept is derived from section 101(f) of the Internal Revenue Code [I.R.C. § 101(f) (1982)] relating to exclusion from gross income of the proceeds of a flexible life policy payable by reason of death.

instead been required to purchase a second policy in order to obtain the increased insurance benefits.

Petitioner states that adoption of the suggested rule is the best way to resolve the questions which this new product raises under the Act, and argues that adoption of the rule, as in the case of rule 6e–2, is consistent with the statutory standards set forth in section 6(c) of the Act.

II. The Commission's Decision to Request Public Comment and Publish Petitioner's Suggested Exemptive Rule

The Commission has decided to ask for public comment on the issues arising under the Act relating to flexible life. Since these issues are complex and the Commission has not yet had experience with this product through processing registration statements filed under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or exemptive applications filed under the Act, the Commission is seeking input from those persons most familiar with and most likely to be affected by Commission action relating to flexible life. In order to aid public discussion of these issues, the Commission is publishing the ACLI's suggested rule and the ACLI's memoranda discussing it.[7] These documents reflect extensive insurance industry consideration of the issues, and may help the public in considering the issues raised by flexible life. Commenters should note, however, that in publishing Petitioner's rule, the Commission expressly takes no position either as to the need for or appropriateness of adopting Petitioner's rule or any other exemptive rule in his area.[8]

[7] The suggested rule and supporting memoranda, along with the text of a suggested rule under section 6(c) of the Act that is similar to rule 6c–3 [17 CFR 270.6c–3] for traditional variable life, are attached to this release (the suggested rule and supporting memorandum filed on June 29, 1983 are Attachment A; the supplemental rule and memorandum filed on September 15, 1983 are Attachment B). In addition to these documents, the ACLI's petition includes six appendices containing: (1) a copy of the National Association of Insurance Commissioners' Variable Life Insurance Model Regulation and Commentary; (2) an illustration of the death benefits options under flexible life; (3) a discussion of the definition of sales load under the suggested rule; (4) a demonstration of compliance with the suggested rule's test for sales loads other than front-end sales loads; (5) an illustration of the proposed test for sales load on or after increases in or additions of insurance benefits; and (6) formulas for calculations shown in certain of the appendices. These latter documents are available for public inspection in, or upon request from, the Commission's Public Reference Room.

[8] In addition, the Commission's action should not be interpreted as expressing any views on the status under the federal securities laws of any other products offered by insurance companies.

Following the comment period, the Commission may take any of several actions, including, (1) adoption of the suggested rule or a modified version of it, with or without further opportunity for comment; (2) proposal of a new rule for flexible life; (3) proposal of amendments to rule 6e–2 in order to accommodate flexible life; or (4) deciding to address flexible life issues by other means (*e.g.*, suggesting that potential flexible life issuers file individual exemptive applications or holding public hearings on flexible life prior to taking action).

III. Request for Written Comments

The Commission invites all interested persons to submit comments on how the issues under the Act raised by this new product should be resolved. In particular, comments are requested on the following questions:

(1) Should the Commission adopt an exemptive rule under the Act? If not, what alternative approach should be used and why?

(2) Assuming an exemptive rule is needed,

(a) Will the suggested rule permit a flexible life policy to be offered, and, if not, what additional relief is necessary?

(b) Would it be feasible to offer a flexible life policy with less extensive relief and, if so, what changes could be made in the suggested rule?

(c) Are there any recommended changes in the language of the suggested rule?

(3) As discussed above, Petitioner asserts that the guideline annual premium concept is the best way to resolve the novel questions concerning sales load and section 27 of the Act which this new product raises.

(a) Is this approach appropriate?

(b) Are there any feasible alternatives to this approach? Written statements must be received on or before February 14, 1984, and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Such communications should refer to File No. S7–1004 and will be available for public inspection.

Regulatory Flexibility Act Certification

As noted above, one option reserved by the Commission is to adopt Petitioner's suggested rule, or an amended version thereof, without further opportunity for comment. Under these circumstances, the Commission's action may be deemed to be proposed rulemaking under this Act. Therefore, the Chairman of the Commission, pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], has certified that petitioner's suggested rule, if it were adopted, would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paper Reduction Act: The proposed action is not subject to this Act.

Statutory Authority

The instant action is being taken pursuant to the provisions of sections 6(c), 6(e), and 38(a) of the Act [15 U.S.C. 80a–6(c), 80a–6(e), and 80a–37(a), respectively].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

By the Commission.

George A. Fitzsimmons,

Secretary.

November 23, 1983.

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 Petitioner's suggested rule under the Investment Company Act of 1940, if it were adopted by the Commission, would not have a significant economic impact on a substantial number of "small entities," as that term has been defined under the Commission's rules. I base this certification on the ground that the suggested rule, if adopted, would not affect a substantial number of small entities. Although the number and asset size of entities that will offer this new product is not knowable at this time, the Commission believes it probable that flexible life issuers most likely will be issuers of another type of registrable insurance product known as variable annuity contracts. In this regard, it has been the Commission's experience with variable annuity issuers that few, if any, qualify as small entities for purposes of the Act.

Dated: November 23, 1983.

John S. R. Shad

JUNE 29, 1983 PETITION

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Petition for Issuance of Rules and Rulemaking Proceeding Therefore

I. Interest of Petitioner

This petition for the issuance of rules and for a rulemaking proceeding therefore is submitted by the American Council of Life Insurance (hereinafter referred to as "Petitioner"). Petitioner is the principal trade association for life insurance companies and has a membership of 573 stock and mutual insurers. These companies represent approximately 95 percent of the assets of all United States life insurance companies. This petition reflects the joint efforts of the Council and the law firm of Sutherland, Asbill & Brennan.

The exemptive rule proposed in this petition is of substantial interest and importance to Petitioner and its member companies. The life insurance industry has expended considerable effort to develop and market flexible premium variable life insurance—a new life insurance product which should prove exceptionally beneficial to consumers. Accommodation of flexible premium variable life insurance under the Investment Company Act of 1940 is the final issue to be resolved before companies begin issuing these new policies.

This petition sets forth a rule which Petitioner believes will effectively achieve such accommodation. The rule maintains basic investor protections, but also recognizes the unprecedented qualities of flexible premium variable life insurance and provides the specific relief necessary to make this new form of life insurance viable. Petitioner, on behalf of the life insurance industry, urges prompt adoption of the rule to serve the interests of the insurance industry and insurance consumers alike.

II. Statutory Authority

Petitioner, on behalf of itself and its member life insurance companies, respectfully petitions the Securities and Exchange Commission (the "Commission"), pursuant to Section 553(e) of the Administrative Procedure Act and Rule 4(a) of the Rules of Practice of the Commission, for the issuance of an exemptive rule and for a rulemaking proceeding therefore in respect of flexible premium variable life insurance separate account contracts. The statutory authority for this Premium and for the Commission's issuance of an exemptive rule is as follows:

A. Right to Petition

Section 553(e) of the Administrative Procedure Act provides:

> Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.
>
> (5 U.S.C. 553(e) (1976))

Rule 4(a) of the Rules of Practice of the Commission provide:

> Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary of the Commission. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating the nature of his interest and his reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge receipt of the petition and refer it to the appropriate Division or Office for consideration and recommendation * * *. The Secretary shall notify the petitioner of the action taken by the Commission.
>
> 17 CFR 201.4 (1982).

B. Rulemaking Authority

Section 38(a) of the Investment Company Act of 1940 provides:

> The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter * * *. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.
>
> (15 U.S.C. 80a-37(a) (1976))

Section 6(c) of the Investment Company Act of 1940 further provides:

> The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.
>
> (15 U.S.C. 80a-6(c) (1976))

Section 6(e) of the Investment Company Act of 1940 provides:

> If, in connection with any rule, regulation, or order under this section exempting any investment company from any provision of section 80a-7 of this title, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of this subchapter pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.
>
> (15 U.S.C. 80a-6(e) (1976))

C. Rulemaking Format

Section 553(b) of the Administrative Procedures Act provides:

> General notice of proposed rule making shall be published in the **Federal Register**, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—
>
> (1) a statment of the time, place, and nature of public rule making proceedings;
>
> (21) reference to the legal authority under which the rule is proposed; and
>
> (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.
>
> (5 U.S.C. 553(b) (1976). *Accord*, 17 CFR § 201.4 (b) (1982))

Section 553(c) of the Administrative Procedure Act further provides:

> After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for

oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. (5 U.S.C. 553(c) (1976))

III. Reasons for the Proposed Rule

A. Background

During the last ten years, the life insurance industry has developed policies which provide the pooling of risks and losses necessary to life insurance but which differ from conventional whole life policies in various ways. There have been two major developments in this ongoing process which are relevant to flexible premium variable life insurance. One development was scheduled premium variable life insurance, which was the first whole life insurance product to be funded by a separate account. The second development was universal life insurance, a whole life product that provides for guaranteed policy values but at the same time affords policyholders the right independently to adjust premium and insurance benefits.

1. *Scheduled Premium Variable Life Insurance*

The variable life insurance policies developed and marketed to date generally might be described as scheduled (*i.e.*, fixed) premium policies that guarantee a minimum death benefit but, unlike conventional whole life insurance, also provide for a variable death benefit and cash value that reflect the investment experience of one or more segregated asset accounts or "separate accounts" of the insurance company. In this sense these policies represents the separate account version of conventional fixed premium whole life insurance with guaranteed values written out of the insurer's general account for many years.

The introduction of scheduled premium variable life insurance marked the first instance in which life insurance companies offered life insurance policies subject to the federal securities laws, particularly the 1940 Act. In late 1970, the industry approached the Commission and asserted that scheduled premium variable life insurance was not subject to the federal securities laws, although certain exemptive relief was sought to resolve any uncertainties about their application not these products. The Commission engaged in a lengthy examination of scheduled premium variable life insurance and took the position that the product would be sold primarily for its nonguaranteed cash values. Accordingly, in 1973 the Commission concluded that such policies are securities subject to registration for purposes of the Securities Act of 1933, that persons selling such policies are broker-dealers for purposes of the Securities Exchange Act of 1934, that separate accounts funding such products are investment companies subject to registration for purposes of the 1940 Act, and that persons rendering investment advice to such separate accounts are investment advisers for purposes of the Investment Advisers Act of 1940. *See* Securities Act Rel. No. 5360, Securities Exchange Act Rel. No. 9972, Investment Company Act Rel. No. 7644, Investment Advisers Act Rel. No. 359, 1 SEC Docket 1 (January 31, 1973). It was also concluded that scheduled premium variable life insurance policies are "periodic payment plan certificates" within the meaning of Section 2(a)(27) of the 1940 Act. *See* SEC Division of Investment Management Regulation, Variable Life Insurance and the Petition for Issuance and Amendment of Exemptive Rules 128–129 (January 30, 1973) (herinafter cited as "1973 Division Report"). Although the Commission simultaneously adopted Investment Company Act Rule 3c–4 and Investment Advisers Act Rule 202–1, providing complete exemptions from those acts with respect to scheduled premium variable life insurance policies meeting certain requirements, it ultimately rescinded those rules. *See* Investment Company Act Rel. No. 8826, Investment Advisers Act Rel. No. 483, 7 SEC Docket 221 (June 18, 1975). Instead, in October 1976, almost six years after the industry's initial submission to the Commission, Rule 6e–2 was adopted, providing conditional relief from specific provisions of the 1940 Act. *See* Investment Company Rel. No. 9482, 10 SEC Docket 751 (October 18, 1976).

2. *Universal Life Insurance*

The design of general account whole life policies also has evolved significantly in the last decade. In particular, since the advent of scheduled premium variable life insurance, more than 100 companies have introduced policies commonly known as universal life insurance. These policies provide for guaranteed policy values and for the pooling of risks and losses characteristic of conventional whole life insurance. They also, however, typically permit the policyholder to change the amount and timing of the premiums and (provided that underwriting requirements are met) the size of the death benefit as the policyholder's needs change. Universal life insurance policies are treated as life insurance policies for purposes of state insurance law and the Internal Revenue Code.

B. Flexible Premiam Variable Life Insurance

Life insurance companies are now anxious to market flexible premium variable life insurance, which is a new class of variable life insurance policy funded by separate accounts *and* providing for flexible premiums and death benefits. These policies will combine certain characteristics of existing variable life policies (notably, a death benefit and cash value that may vary in certain respects to reflect the investment performance of a separate account) and existing universal life policies (notably, unscheduled premium payments and death benefits that may be adjusted by the policyholder). Accordingly, under this product design each individual policyholder can purchase a single policy, obtain an immediate insurance benefit many times in excess of the premium payment, and thereafter independently adapt premium payments and the level of death benefit to individual insurance needs as economic conditions and personal circumstances change. The policyholder also may participate in the investment perfomance of a separate account. In short, just as universal life insurance is an evolutionary form of conventional whole life insurance, flexible premium variable life insurance will be a further evolution of scheduled premium variable life insurance, modified to provide for the policyholder's adjustment of premiums and death benefits.

The combination of these fundamental characteristics in flexible premium variable life insurance is unprecedented and will provide unique benefits for consumers. Policyholders may, at their discretion and subject only to the insurer's underwriting rules, significantly adjust the insurance benefits under such a policy by changing the face amount of insurance and the pattern of premium payments. In addition, policyholders generally will not be constrained by schedules imposed by the insurance company regarding the timing or amount of payments. So long as the cash value of the policy is sufficient to meet current charges, policyholders will be free to adjust their premium payment pattern. Policy lapsation will not be linked to the nonpayment of a premium scheduled by the insurance company. These features will be offered in a policy under which the cash value and, indirectly, the death benefits reflect the investment earnings of one or more separate accounts. Finally, policyholders usually will realize greater convenience and cost

savings by avoiding the need to purchase and maintain a new policy each time their insurance needs change. Thus, flexible premium variable life policies will offer policyholders an unmatched combination of insurance, convenience, economy, adjustability, and investment participation, and should prove to be exceptionally beneficial for consumers.

No flexible premium variable life insurance policies have been written at this time (primarily because of the need to accommodate state and federal law). The features of such policies, however, will be substantially shaped by state insurance laws and regulations and the applicable provisions of the Internal Revenue Code (in addition to the 1940 Act).

Flexible premium variable life insurance policies, like all insurance policies, will be subject to extensive regulation by state insurance commissioners. In particular, such policies will be required to conform to state insurance laws and applicable regulations. The Variable Life Insurance Model Regulation was amended by the National Association of Insurance Commissioners ("the NAIC") in December 1982 specifically to allow flexible premium variable life insurance. (A copy of the Model Regulation as amended, with commentary, is attached as Appendix A.) States are now in the process of considering and adopting the amended Model Regulation.[1] The Model Regulation, as amended, regulates the qualification of an insurer to issue fixed or flexible premium variable life insurance; insurance policy requirements (including mandatory benefit, design, and policy provision requirements); reserve liabilities; separate accounts; and policyholder disclosures, applications, and reports.

Similarly, it can be expected that most if not all policies will be designed to satisfy any applicable requirements of the Internal Revenue Code. These requirements currently are contained in Section 101(f), which generally should be applicable to flexible premium variable life insurance.

The feature common to all flexible premium variable life insurance policies will be adjustability of premium payments. Other features may vary from company to company. It is anticipated that, except for the nonguaranteed nature of the cash value benefits, most policies will be similar in design to existing universal life policies (although such similarity is not necessary and some flexible premium variable life policies may also resemble to some degree scheduled premium variable life policies). Flexible premium variable life insurance modeled on universal life insurance is expected to typically have the following features.

1. *Benefits*

Flexible premium variable life insurance, like conventional whole life insurance and scheduled premium variable life insurance, will provide an immediate death benefit many times the amount of the initial premium paid.[2] Upon payment of the first premium, the policyholder immediately will receive the full measure of death protection for which he or she has contracted. The death benefits will be payable in full so long as the policy remains in force,[3] without regard to the total amount of premiums paid *or* the pattern of those premium payments.

The death benefit payable while the policy remains in force will never be less than the face amount of the policy. The policyowner typically will be able to increase or decrease the face amount of the policy, subject to evidence of current insurability if the change entails an increase in the net amount at risk. Policies usually will prescribe a minimum face amount, however.

Flexible premium variable life insurance, like scheduled premium variable life insurance, will differ from traditional whole life insurance in that the amount of the death benefit may depend on separate account investment performance. Under existing variable life policies, the death benefit may increase or decrease in a manner determined by the insurer depending on the investment experience of the separate account relative to the assumed investment rate. The precise consequences of investment experience depend on the design utilized by the insurance company—*e.g.*, the "Equitable," the "New York Life," or some other design.

In contrast, under a flexible premium variable life insurance policy, the policyholder generally will have the right to elect one of two options set forth in the policy for calculating the amount of the death benefit. Under the first option, the death benefit will equal the face amount of the policy, or, if greater, the cash value plus a pure risk amount (either a specified amount or a specified percentage of the cash value, or, in some instances, the greater of the two). Under the second option, the death benefit will equal the face amount of the policy *plus* the cash value. Under this option some poicies may specify that the benefit payable must not be less than a minimum percentage of cash value. The policyholder may have the right from time to time to change the death benefit option initially selected. (These death benefit options are illustrated in Appendix B.) Thus, whichever option is selected, the death benefit will always exceed the cash value.[4] The cash value will increase or decrease with premium payments, investment performance, and charges authorized under the policy.[5]

Investment performance may also have a bearing on the duration of the death benefit. As described more fully below, a flexible premium variable life policy generally will remain in force so long as the cash surrender value is sufficient to meet policy costs. The investment experience of the separate account, as reflected in the cash surrender value, will positively or negatively affect the amount of funds (other than future premiums) available to keep the policy in force, and thus to perpetuate the death benefit.

While the variation in the amount or duration of the death benefit is, in part, a function of investment experience, the death benefit is inextricably bound to the pooling and distribution of mortality risks fundamental to life insurance. In order for an insurance company to provide a death benefit in excess of the premimums paid and the cash value, the mortality risk for each policyholder must be pooled and distributed among all policyholders. Each policyholder will pay charges for the cost of insurance commensurate with his or her own risk, actuarially computed upon the basis of factors such as age, sex, health, and occupation. The desired effect is that the death benefit for policyholders who die prematurely will be covered, through the pooling of costs, by the policyholders who die later.

[1] The Model Regulation as amended should provide the basic framework for state regulation of flexible premium variable life insurance. Each jurisdiction independently adopts its own regulation, however, and in all likelihood the precise provisions of the regulations as adopted will vary somewhat among the jurisdictions.

[2] If the policyholder pays a large initial premium, that is if he uses a flexible premium variable life policy as a single premium product rather than as a periodic premium product, the immediate death benefit of course will be a relatively smaller multiple of the initial premium.

[3] For a discussion of lapsation, see pages 21–22, *infra*.

[4] The Internal Revenue Code may independently place restrictions on the relationship between the cash value and the death benefit. For example, if the policy qualifies for life insurance tax treatment under the "guideline premium with limited cash value" test currently contained in Section 101(f)(1)(A), the death benefit will never be less than 140 percent of the cash value, grading down to 105 percent at higher attained ages.

[5] For a discussion of nonforfeiture values, see pages 17–18, *infra*.

As in the case of other life insurance policies, the insurance company will maintain live insurance reserves with respect to the death benefit payable under each flexible premium variable life insurance policy as required by state law. Flexible premium variable life insurance will provide for a death benefit which at all times is in excess of the reserves computed therefor, resulting in the insurer's assumption of a pure insurance risk (the death benefit less the policy reserves) to the extent of the excess. If the mortality experience of the insured group is unfavorable, the insurer will be required to draw upon its surplus to meet its contractual obligations. Similarly, if the expenses incurred with respect to its flexible premium variable life policies, as affected by inflation and other factors, exceed the expenses assumed in product pricing, the insurer will be required to draw upon its surplus.

Flexible premium variable life insurance policies may also provide for conventional incidental insurance benefits such as family term insurance, an accidental death benefit, a waiver of premium benefit, and the like. These additional coverages conceivably could be purchased through fixed premiums distinct from premiums for the basic coverage or, more likely, through periodic changes against the cash value of the policy.

2. *Premiums*

Flexible premium variable life insurance policies will provide for the payment of one or more premiums that are not fixed by the insurance company as to both timing and amount. Thus, under such a policy the insurer may fix the timing of premium payments but not the amount, the amount of premiums but not the timing, or neither the timing nor the amount of one or more premiums. It is expected that both the amount and frequency of premium payments generally will be flexible and determined by the policyholder. Companies, however, may reserve the right to limit the amount and number of payments or may require minimum premiums for certain policy years. It will be mathematically possible to calculate a schedule of "target" periodic premiums to be paid under the policy, which will be intended to provide the insurance benefits desired by the policyholder at any given time. Many policies may stipulate a target premium schedule, and many companies and agents will encourage (but not require) purchasers to make payments in accordance with such a schedule. The failure to pay a target premium will not of itself cause the policy to lapse, however. (The circumstances under which the policy will be in default are explained more fully below.)

3. *Nonforfeiture Values*

The cash value of a flexible premium variable life policy will always be determined in a manner consistent with the calculation of the cash value of a conventional whole life insurance policy, but the cash value will change on a daily rather than an annual basis. The cash value as so computed will be consistent with the minimum requirements of the Standard Nonforfeiture Law as adopted in all the states and of the Variable Life Insurance Model Regulation.

The cash value of any day typically will be determinable as the sum of (1) the cash value on the preceding date, plus or minus (2) daily investment performance on the foregoing cash value, net of asset charges such as charges (if any) for income tax, investment expense, investment advice, and mortality risk, expense risk, and interest rate guarantees, plus (3) premiums credited to the policy since the preceding day, net of charges against premium for, *inter alia*, premium tax, administrative expense, and premium payment mode, less (4) charges for the cost of insurance, any guaranteed death benefit, administrative expense, incidental insurance benefits, and substandard insurance risks, which generally will be deducted on monthly or annual policy anniversaries rather than on a daily basis. (The actual form of the various charges likely will vary somewhat from company to company.) Sales loads may be charged in a number of forms, as discussed more fully at page 57, below. Although the *types* of charges deducted under flexible premium variable life insurance will generally correspond to the charges authorized under scheduled premium variable life insurance, the *form* of such charges in some cases may be a deduction from cash value rather than from gross premiums because of the unscheduled premium structure essential to the flexible premium variable life design. As is the case for scheduled premium variable life insurance, the cash value will be determinable on any day, although it actually will be computed only when necessary to satisfy legal requirements or the terms of the policy.

The cost of insurance reflected in the policy's cash value will be determined by multiplying the net amount at risk (the death benefit less the cash value of the policy) by the "cost of insurance rate." The cost of insurance rate reflects the charge for pure insurance coverage based on factors such as the sex, attained age, and rate class of the insured. The insurance company will guarantee that these rates, which will be based on its expectations as to future experience, will never exceed those listed in a table of guaranteed maximum rates set forth in the policy. The actual rates charged may be less than or equal to the guaranteed rates.

As in conventional whole life insurance and scheduled premium variable life insurance, the cash value for a flexible premium variable life policy is a feature that serves to accumulate amounts to help meet policy costs in later years, when the annual costs could become prohibitive if not prefunded. The cost to a policyholder of a specified death benefit is less in early policy years than in later policy years.

The policyholder generally will have the right at any time, as in the case of a conventional whole life policy or a scheduled premium variable life policy, to borrow at least 75 percent, and in some cases as much as 90 or 100 percent, of the policy's cash surrender value (less any outstanding indebtedness) on the sole security of the policy. The amount of the loan typically will be withdrawn from the separate account and transferred to the general account of the insurer, until repaid. Policy loans outstanding will bear interest at a rate guaranteed not to exceed a maximum rate determinable from the policy and limited by state insurance law. Any amounts borrowed but not repaid prior to the death of the insured will offset the amount of the death benefits. Policy loan provisions at least this favorable to policyholders are required by Article IV, Section 4 of the Variable Life Insurance Model Regulation.

The policyholder generally may, as in the case of traditional whole life and scheduled premium variable life policies, surrender the policy at any time for its "cash surrender value," *i.e.*, the full cash value less any indebtedness and less a possible deferred sales charge or other surrender charges. *Unlike* any existing variable life insurance policy, a flexible premium variable life insurance policy may permit a partial withdrawal of a portion of the cash value (subject to a possible deferred charge), which will typically reduce the death benefits currently payable under the policy, dollar for dollar. (It is anticipated that partial surrenders resulting in pro rata reductions in death benefits and the cash value generally will not be expressly provided for in these policies.)

4. *Sales Loads and Commissions*

Because flexible premium variable life insurance fundamentally is life insurance, issuers will incur characteristic insurance sales and distribution costs in marketing the new product. In particular, companies will pay first-year and renewal commissions to insurance sales personnel. These commissions may be computed on a variety of bases taking into account, for example, premium payments, the face amount of the policy, cash value or the cost of insurance.

Sales loads will generally be designed to recover sales and distribution expense, including any first-year expenses subsidized by the insurer's general account, in a manner that each company can afford. Accordingly, feasible sales load structures will vary among companies. It is contemplated that one or more issuers will find each of the following structures appropriate: (1) A front-end sales load, (2) a back-end sales load, which may or may not be contingent upon surrender or withdrawal, (3) a periodic charge against cash value to pay sales and distribution expense, computed as a fixed dollar amount, as a percentage of assets, or on some other basis, or (4) a combination of the above. This variety of load structures contrasts with scheduled premium variable life insurance policies currently being issued, which impose only front-end sales loads.[6]

5. *Other Provisions*

Some flexible premium variable life policies will mature or endow at a policy anniversary nearest a specified date—for example, the insured's 95th birthday. (Because the consequences of maturity will generally be equivalent to the consequences of a complete policy surrender, some companies may not specify a maturity date.) The owner may be able to change the maturity date, if any. On the maturity date, all insurance coverage under the policy typically will terminate. The proceeds payable upon maturity will equal the then cash value less any indebtedness.

In advance of maturity or surrender, the policy will terminate when the insured dies, or, if sooner, when the "grace period" ends. The grace period will begin on a policy processing day (that is, a day on which the charges authorized in the policy are deducted) on which the amount available under the policy is insufficient to cover the cost of insurance, policy loan interest (if any), and any expense charges payable on that day under the policy. (Under the Variable Life Insurance Model Regulation, the insurer must send the policyholder a notice indicating the minimum payment necessary to keep the policy in force and the length of the grace period.) The policy will lapse if additional premium is not received within a specified number of days (at least 61 days) after the grace period begins.[7] Thus, as stated above, the policy will not be placed in default merely by the nonpayment of any given premium but will simply continue, unless otherwise terminated by maturity, surrender, or death, until it terminates without value at the end of the grace period. Because of the unscheduled premium structure of flexible premium variable life insurance, these requirements differ from the provisions applicable to scheduled premium variable life insurance, which typically lapses upon nonpayment of a scheduled premium. Generally, a flexible premium variable life policy may be reinstated even after termination, upon compliance with conditions stated in the policy.

The proceeds payable under a flexible premium variable life policy upon surrender, maturity, or death will be in a lump sum, or in accordance with various settlement options described in the policy. It is expected that such settlement options will include those usually found in other insurance and annuity products. These settlement options typically are (1) payment for a fixed period, (2) life income, (3) payments for a fixed amount, (4) deposit at interest, and (5) joint and survivor life income. Under Article IV, Section 3(o) of the Variable Life Insurance Model Regulation, at least one settlement option must be provided on a fixed basis.

C. Basis for Exemption From the 1940 Act

Like scheduled premium variable life insurance, flexible premium variable life insurance policies generally will have nonguaranteed cash values funded by one or more separate accounts. Therefore, it has been assumed that the Commission would conclude, as it ultimately did in the case of scheduled premium variable life insurance, that the federal securities laws apply to flexible premium variable life policies, separate accounts funding such policies, persons marketing such policies, and persons providing investment advice with respect to such policies. It is not conceded for purposes of this petition or any other purpose that such conclusions are supported by the language, purposes, and policies of these statutes or by the judicial interpretations thereof. Even if these conclusions were correct, in light of the experience with respect to scheduled premium variable life insurance, it is clear that the application of the federal securities laws, particularly the 1940 Act, to a product with significant life insurance features is cumbersome, difficult, and in certain respects impossible.

It would be contrary to the interests of the public, the interests of the life insurance industry, and the Commission's interest in the orderly administration of the securities laws to debate the status of flexible premium variable life insurance under such laws. Instead, these interests are best served by a prompt resolution of those federal securities law issues impeding the development of flexible premium variable life insurance. It is imperative that the Commission expeditiously provide the exemptive relief necessary and appropriate for the industry to issue such policies. Accordingly, it is respectfully proposed that the Commission, pursuant to its authority under Sections 6(c), 6(e), and 37(a) of the 1940 Act, promulgate a rule exempting flexible premium variable life separate accounts and related persons from certain provisions of the 1940 Act.

Section 6(c) empowers the Commission to:

> conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Congress intended Section 6(c) to provide the Commission flexibility in applying the strict requirements of the 1940 Act to situations unanticipated at

[6] The uniform nature of sales load structures in scheduled premium variable life insurance policies issued to date in part has resulted from the regulatory pattern of Rule 6e–2, which was drafted primarily with reference to then existing front-end loaded policies. Such uniformity, however, is neither necessary nor desirable. Indeed, the benefits of deferred sales load to consumers have in several contexts led companies to shift from front-end to back-end loads. This trend toward back-end loads is well established among variable annuity issuers. A new scheduled premium variable life insurance product is currently being registered that provides for what might be described as a deferred sales charge. Some companies are also introducing certain types of unregistered general account life insurance products that explicitly provide for a back-end load.

[7] These grade period provisions are required by Article IV, Section 3(b)(2) and Article IX, Section 3 of the Variable Life Insurance Model Regulation.

the time of enactment, provided that the statutory criteria are satisfied.[8]

Congress obviously did not anticipate the application of the 1940 Act to variable insurance or annuity products that were not in existence in 1940. Indeed, the literal requirements of the 1940 Act are so incompatible with such products that since 1960 it has been necessary for the Commission to provide general or individual exemptive relief with respect to *each* variable annuity contract and scheduled premium variable life insurance policy registered under the 1940 Act. It is self-evident that flexible premium variable life insurance necessarily presents an exceptional situation unforeseen by Congress in enacting the 1940 Act, which warrants resort to Section 6(c).

The statutory prerequisites to the exercise of the Commission's authority under Section 6(c)—that the exemption "is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]"—are amply satisfied with respect to flexible premium variable life insurance, just as they were with respect to scheduled premium variable life insurance. Although the industry is not contesting the status of flexible premium variable life insurance at this time, the considerations that ultimately led to the adoption of Rule 6e-2 are equally applicable in this new context.

The Commission provided exemptions in Rule 6e-2 "[i]n recognition of the unique insurance aspects of variable life insurance and the extensive insurance regulatory pattern to which the contracts, issuers and related persons will be subject. . . ." Investment Company Act Rel. No. 8691, Investment Advisers Act Rel. No. 440, 6 SEC Docket 364, 364 (February 27, 1975) (notice of intention to propose a rule under Section (6e)). It recognized that scheduled premium variable life insurance provides current insurance protection to policyholders and is therefore distinguishable from strictly investment-oriented products like mutual funds. *Id.* It further determined that scheduled premium variable life insurance represented a "combination of investment and insurance elements" which is "different" from any other product regulated by the 1940 Act. *See* Investment Company Act Rel. No. 8000, Investment Advisers Act Rel. No. 391, 2 SEC Docket 481, 483 (September 20, 1973) (notice of proposed amendments to Rules 3c-4 and 202-1). The Commission also acknowledged that traditional state insurance regulation and state laws specifically drafted for variable insurance products [9] both paralleled a substantial number of the protections afforded by the federal securities laws and conflicted to a certain extent with the 1940 Act. *See* Investment Company Act Rel. No. 8691, *supra*, at 364. Finally, the Commission recognized that various provisions of the 1940 Act presented difficult compliance problems of simply should be modified in the context of variable life insurance. *See* Investment Company Act Rel. No. 9104, 8 SEC Docket 932, 932-33 (December 30, 1975) (notice of proposal to adopt Rule 6e-2).

For the same reasons, exemptions should be provided from the 1940 Act for flexible premium variable life insurance. Unlike mutual funds, the primary feature of flexible premium variable life policies will be to provide current insurance benefits to purchasers. Thus, in addition to providing investment participation, such policies will provide benefits involving insurance and other risks borne by the insurance company, as discussed more fully above.[10]

Flexible premium variable life policies will also be treated as insurance policies for purposes of state insurance law [11] and, accordingly, such policies, the issuing insurance company, and related persons will be subject to state insurance regulation. As noted above, in December 1982, the NAIC amended the Variable Life Insurance Model Regulation specifically to take account of flexible premium variable life insurance. The Model Regulation provides a variety of safeguards for policyholders that operate in harmony with the federal securities laws. [12] For example, the qualifications of insurance companies to engage in a variable life insurance line of business are specified.[13] The insurance policy must be filed with and approved by the state insurance commissioner prior to issuance.[14] The Model Regulation also regulates the determination and valuation of cash values,[15] and requires that the policyholder be accorded a "free look" right, to the extent required by state law.[16] (Some states also require that the policyholder be permitted to convert a variable benefit policy to a fixed benefit policy during the first 18 months.) Certain disclosures and reports to policyholders are required,[17] and the use of false, misleading, deceptive, or inaccurate sales material is prohibited.[18] The operations of the separate account [19] and the establishment of reserves for policy liabilities are also regulated.[20]

To a certain extent, however, the state regulation of insurance conflicts with the 1940 Act. In large part, state law seeks to protect policyholders by assuring the solvency of insurance companies, the adequacy of their reserves, and thus their ability to meet their contractual obligations to policyholders. The operation of a flexible premium variable life insurance separate account will not only affect a company's ability to meet its obligations to flexible premium variable life policyholders, but also to its general account policyholders (to the extent that the general account underwrites the risks borne with respect to the separate account). Accordingly, in the interest of either type of policyholder, state insurance regulators are empowered to act to protect a company's solvency (*e.g.*, to object to the elected separate account management, to modify separate account investment policies or to terminate the investment advisory

[8] *See, e.g.*, Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 197, 872 (1940); Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on International and Foreign Commerce, 76th Cong., 3d Sess. 120 (1940); SEC, Report on Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 37 (1966).

The Commission's authority under Section 6(c) is supplemented by Section 38(a), which empowers the Commission to make, issue, amend, and rescind rules necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the 1940 Act, including rules and regulations defining accounting, technical, and trade terms used in the 1940 Act. The full text of Section 38(a) is set out at page 3, *supra*.

[9] The NAIC promulgated the Model Variable Contract Law and Regulation in 1970, and supplemented that model with the Variable Life Insurance Model Regulation in 1973. As of December 1982, 47 states had enacted variable contract statutes and 27 states had issued regulations governing variable life insurance policies.

[10] Congress has accorded the same tax treatment to flexible premium life insurance meeting certain requirements as it has to traditional whole life insurance. Since flexible premium variable life insurance will generally meet the requirements of Section 101(f) of the Internal Revenue Code, it will receive the same tax treatment as other life insurance products.

[11] It should be noted in this regard that 1940 Act exemptions are requested only for policies that are treated entirely as life insurance policies under state law. Relief is not sought for insurance programs treated under state law as providing, for example, a combination of term life insurance with an annuity or a deposit fund.

[12] It should again be noted that the laws and regulations of each jurisdiction may differ from the Model Regulation.

[13] Variable Life Insurance Model Regulation, arts. III, XI.

[14] *Id.*, art. IV, Section 1.

[15] *Id.*, art. IV, Sections 2 (e), (f).

[16] *Id.*, art. IV Section 3(a)(5).

[17] *Id.*, arts. VII, IX.

[18] *Id.*, art. III, Section 4.

[19] *Id.*, art. VI.

[20] *Id.*, art. V.

contract [21]) in a manner that may conflict with the 1940 Act.

Finally, the inherent difficulties in complying with the 1940 Act recognized by the Commission during the promulgation of Rule 6e–2 are not limited to scheduled premium products; rather, they are generic problems encountered with respect to all forms of life insurance subjected to the 1940 Act. Indeed, these problems are more acute in the context of flexible premium variable life insurance. The flexibility of premium payments and the face amount of insurance fundamental to flexible premium variable life insurance makes compliance with certain provisions of the 1940 Act even more difficult and inappropriate, and justifies somewhat different exemption than those granted in Rule 6e–2 for scheduled premium variable life insurance.

For these reasons, and exemptive rule from the 1940 Act for flexible premium variable life insurance is warranted.

IV. Analysis of Proposed Exemption From the 1940 Act

The rule proposed in this petition provides important exemptive relief from many provisions of the 1940 Act. The rule contains in substance many of the exemptions now provided variable life insurance in Rule 6e–2. The rule provides relief different from Rule 6e–2 only where the novel characteristics of flexible premium variable life insurance mandate, or where the experience of the past seven years has shown that Rule 6e–2 should be clarified or modified.[22] For the reasons outlined in this petition, the rule as proposed will maintain the basic investor protections provided by the 1940 Act and thus will satisfy the requirements of Section 6(c). At the same time, the proposed rule recognizes the unprecedented qualities of flexible premium variable life insurance and the special relief necessary to make this valuable form of insurance protection viable.

A. Definition of Flexible Premium Variable Life Insurance Separate Account and Policy

As in Rule 6e–2, the proposed rule provides relief from the 1940 Act only if the flexible premium variable life insurance separate account and policy meet certain requirements.

1. *The Separate Account*

The proposed requirements for the separate account in substance correspond to those now contained in paragraph (a) of Rule 6e–2. with two exceptions.

The proposed rule permits the separate account to fund both scheduled premium *and* flexible premium variable life policies. The interests of scheduled premium and flexible premium variable life policyholders, the insurer's interests with respect to the two types of policies, and the regulatory frameworks for the two types of policies will be sufficiently parallel that funding both policies through a single separate account should not prejudice any policyholder. Furthermore, the increased pooling, diversification, and scale economies in expenses realized from the use of a single separate account would benefit both types of policyholders. Therefore, the funding of both types of life insurance policies with a single separate account is permitted.[23] However, Rule 6e–2 and the proposed rule would separately govern the terms (including the level of charges) of scheduled premium variable life policies and flexible premium variable life policies, respectively, funded by a single separate account.

The proposed rule also permits funds corresponding to dividend accumulations to be placed in the flexible premium variable life insurance separate account. A dividend is a return of part of the premium on participating insurance to reflect the difference, if any, between the premium charged and the combination of actual mortality, expense, and investment experience (although a flexible premium variable life policy generally would not have any excess interest earnings to be applied to a dividend because net earnings are credited in full to the separate account). Policyholders typically are given the option of receiving dividend distributions in cash, applying dividends to premium payments, or accumulating dividends at interest with the insurer. Rule 6e–2 prohibits the placement in separate account (and therefore participation in the investment experience of the account) of dividend accumulations, along with other liabilities not involving life contingencies.[24] Policyholders should be permitted to allocate dividend distributions to the flexible premium variable life insurance separate account. Dividends are an integral element of the pricing of participating insurance products and, to the extent that a flexible premium variable life policyholder dedicates funds to the policy which prove unnecessary to satisfy the claims on and expenses of the insurance pool, those funds should be permitted to remain in the separate account at the policyholder's direction. Indeed, an exclusion of dividend accumulations would be ineffectual; since premium payments are flexible rather than fixed and are not subject to a maximum annual amount, a policyholder could in practice accumulate dividends in the separate account through the simple divice of endorsing dividend checks back to the insurer, in addition to paying new premiums. A prohibition on dividend accumulations thus would lack substance.

2. *The Policy*

The difinition of "flexible premium variable life insurance policy" in the proposed rule is comparable to the "variable life insurance contract" definition in Rule 6e–2, but has been modified to reflect the differing character of the new product and to correspond to the amendment to the Variable Life Insurance Model Regulation. In particular, the definition reflects the unscheduled premium payments and the variable amount *and* duration of death benefits (depending on separate account investment performance) fundamental to flexible premium variable life insurance. Consistent with the features of such policies, particularly the policyholder's ability to adjust the premium payments and the face amount of insurance once the policy is issued, the definition does not *require* a guaranteed minimum death benefit of a specified amount.

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[21] *Id.*, art. VI, sections 1(b), 6, 10.

[22] Although this petition does not discuss amendments to Rule 6e–2, that rule should also be amended to the appropriate extent. Rule 6e–2 would generally govern scheduled premium variable life products; the proposed rule would govern flexible premium products.

[23] Similarly, under the proposed rule, a flexible premium variable life insurance separate account organized as a unit investment trust should be permitted to invest its assets in registered management investment companies which offer their shares to other purchasers as well. For a discussion of this point, see page 74, *infra*.

[24] The prohibition on holding dividend accumulations in the separate account contained in Rule 6e–2 apparently was derived from paragraph (a)(2) of Rule 3c–4, which was rescinded in its entirety in 1975. Although the public record is not entirely clear, the requirement of Rule, 3c–4 in turn apparently was derived from the insurance industry's original request for exemptive relief for variable life insurance. The intent of the requirement was to assure that the separate account operated as a mechanism to pool mortality risks rather than as an investment fund. *See* Petitioners' Memorandum in Support of Petition, *In re* American Life Convention and Life Insurance Association of America, SEC Administrative Proceeding File No. 4–149, at 10 (August 21, 1972). For the reasons discussed above, the requirement would not serve such purpose (and is unnecessary to serve such purpose) in the case of flexible premium variable life insurance.

The proposed definition does require assumption of mortality and expense risks by the insurance company. However, a limitation on the minimum amount of the charge for such risks (and thus, indirectly, on the maximum charge) is not included in the rule.[25] The required *assumption* of risks necessarily implies that a maximum charge will be guaranteed, and Article IV, Section 2(a) of the Variable Life Insurance Model Regulation requires that maximum charges be stated in the policy.

B. Sales Load Provisions

As was the case with respect to variable life insurance, significant relief from the sales load restrictions applicable to periodic payment plan certificates that are contained in Section 27 of the 1940 Act is necessary and justified for flexible premium variable life insurance. Section 27 was enacted to regulate a specific security—contractual plans—within the context of the practices and characteristics of a specific industry—the mutual fund industry. In developing Rule 6e–2, the Commission determined that certain exemptions from this section were necessary to reflect the nature of scheduled premium variable life insurance, the risks assumed by the insurer, and the regulatory activities of state insurance authorities. *See* Investment Company Act Rel. No. 8691, *supra*, at 365. It recognized that Section 27 would present difficult compliance problems for issuers of scheduled premium variable life insurance. *See* Investment Company Act Rel. No. 9104, *Supra*, at 932. The Commission was also aware that the requirements of Section 27 were inconsistent with the traditional methods and levels of compensating insurance sales personnel and amortizing sales expense in early policy years. *See* Investment Company Act Rel. No. 8888, 7 SEC Docket 588, 593–594 (August 13, 1975) (notice of EVLICO application); 1973 Division Report at 138.

For the same reasons, comparable exemptions should be provided for flexible premium variable life insurance. Furthermore, the flexibility inherent in this new product, which is the basis of its advantages for policyholders, makes compliance with Section 27 even more difficult, and necessitates a revised statement of relief.

1. *Definition of Sales Load*

The proposed rule defines the term "sales load" in a manner analogous to the definition in Rule 6e–2. By defining sales load as the difference between gross premiums and certain enumerated items determined *not* to be sales load, this approach recognizes that the timing of expenses to the insurer and of corresponding charges to the policyholder characteristically cannot be matched in insurance products, and that charges may be deducted from either premiums or cash value under flexible premium variable life insurance.

In this regard, the charge for the cost of insurance subtracted in calculating sales load should be noted. Like Rule 6e–2, the proposed rule specifies that this charge is computed on the basis of the 1958 Commissioners Standard Ordinary Mortality Table ("the 1958 CSO Table"). The Standard Valuation Law, promulagated by the NAIC and adopted by all the states, makes the 1958 CSO Table mandatory as the minumum basis for valuing reserves for ordinary life insurance policies issued on or after January 1, 1966. The Commission specified in Rule 6e–2 that the cost of insurance deduction be computed on the basis of this mandatory mortality table. The Commission was aware, however, that the table was conservative in its mortalilty projections, that the insurance company (whether organized as a stock company or a mutual company) consequentially might realize in its general account amounts reflecting the difference between projected and actual mortality experience, and that any current shortfalls in charges to pay sales and distrubution expenses might be satisfied out of general account funds, which mght be attributable in part to any margin in the cost of insurance charge.

The 1958 CSO Table remains the standard mortality table in use in the insurance industry today for computing reserves and minumum cash values. The cost of insurance charge in all variable life insurance policies issued to date is computed on the basis of the 1958 CSO Table. It is anticipated that most insurance companies will guarantee a maximum charge for the cost of insurance for flexible premium variable life insurance policies on the basis of the 1958 CSO Table. The NAIC has adopted a new, less conservative table—the 1980 Commissioners Standard Ordinary Mortality Table ("the 1980 CSO Table")—which will be mandatory for all life insurance policies issued on or after January 1, 1989 (in the jurisdictions that adopt the model law). Adoption of NAIC amendments to the Standard Valuation Law, however, requires positive legislative enactment by each separate jurisdiction. Companies operating only in the substantial number of states which have already amended their statutes are currently permitted to value reserves for new policies on the basis of the 1980 CSO Table, but such companies may choose to postpone use of that table until it becomes mandatory.[26] The 1958 CSO Table will remain mandatory in a jurisdiction until such an amendment is enacted, and thereafter may continue to apply with respect to policies issued before 1989.

In specifying the 1958 CSO Table, the proposed rule is intended to permit the subtraction of an amount based on that table in the computation of sales load even where the cost of insurance actually charged under a particular policy or class of policies is computed on some othar basis. This apppoach is essential to provide a level of sales load relief necessary and appropriate for flexible premium variable life insurance (as was the case for scheduled premium variable life insurance).[27] Accordingly, the proposed rule, like 6e–2, specifies that in *all* cases the cost of insurance deduction is based on the 1958 CSO Table in computing sales load.

The proposed definition of sales load applicable to flexible premium variable life insurance differs in certain respects from the definition contained in Rule 6e–2. Because schedule variable life insurance provides for fixed, periodic premium payments and for the deduction of several charges directly from gross premium, it is possible to attribute such charges to particular payments, as a matter of regulatory definition. The unscheduled, adjustable payments that will be the hallmark of flexible premium variable life insurance make a similar approach impossible, or at best artificial and inappropriate, in this new context. Charges under a flexible premium variable life policy generally will be deducted from cash value when due, without regard to the pattern of premium payments and without tracing the charge to the proceeds of any particular payment. The amount of sales load deducted under this new product up to a given point in time should therefore be measured on

[25] Rule 6e–2 currently requires that the mortality and expense risk charge msut be disclosed in the prospectus and must not be less than 50 percent of the maximum charge disclosed.

[26] Insurance companies may well delay valuing variable life reserves on the basis of the 1980 CSO Table, in order to avoid the collateral effect of such an action on other lines of business (in particular, certain specialized products). Once a company utilizes the 1980 CSO Table for any policy, it will be required to utilize that table at least for all subsequently introduced classes of *similar* products and, in some states, *all* subsequently introduced products. Under New York's interpretation of the Standard Valuation Law, the 1980 CSO Table would have to be used for all subsequently *purchased* products, regardless of when the class of products was introduced.

[27] See the discussion on page 42, *infra*.

an aggregate basis, taking into account all activity under the policy. For purposes of regulatory compliance, this approach would require a demonstration that the sales load computed on, generally, a policy year basis complies with the appropriate limitations. (Because the sales load definition in Rule 6e–2 contemplates premiums and charges on an annual basis, the proposal essentially follows the approach taken in Rule 6e–2 and entails only a formal difference.) While even this approach does not fully reflect the flexible nature of the product, a sales load definition on a policy year basis approximates the statutory definition contained in Section 2(a)(37) of the Act as now applied in Rule 6e–2 and at the same time acknowledges the characteristics of the new product.

In addition to clarifying and conforming revisions, the flexible nature of flexible premium variable life insurance necessitates certain other departures from the sales load definition in Rule 6e–2. In particular, because there will not be a structured relationship between cash value and death benefits (in the absence of a minimum death benefit guarantee), an "assumed investment rate" is relevant to flexible premimum variable life insurance, if at all, only in determining the cost of insurance charge. Therefore, the proposed definition specifies a net annual effective investment rate of 4 percent but otherwise deletes references to this concept. With respect to charges for mortality risk, expense risk, or interest rate guarantees, the proposal directly subtracts such charges in computing sales load to the extent that they are assessed as policy charges (i.e., charges against premium or made on a per policy basis) rather than as asset charges (as is the case with scheduled premium variable life insurance). Similarly, because sales load is defined on a policy year basis taking into account cash value activity, the sales load computation deducts the proceeds of a surrender or withdrawal or of death benefits, offsetting the corresponding negative increase in cash surrender value not attributable to investment experience. Because of the flexible payment structure, an additional actuarial assumption regarding payment patterns is stated with respect to the deduction for dividends. Finally, a "catch-all" deduction for charges not chargeable to sales or promotional activity that are reasonable in relation to expenses incurred has been added. This provision is intended to encompass unforeseen categories of charges that possibly might evolve for this product. Such a provision is consistent with sound regulatory policy in that it authorizes the Commission staff to apply the rule in a manner consistent with the purposes and policies of the 1940 Act, expedites the processing of individual filings, and obviates the need for additional, technical relief. (An illustration of the operation of this definition of sales load is provided in Appendix C.)

2. *Front-End Sales Loads—Relief From Sections 27(a)(1), 27(h)(1), and 27(h)(4)*[28]

As the Commission is aware from its experience with scheduled premium variable life insurance, the life insurance industry historically has incurred relatively high front-end costs in the sales and distribution of its products, compared to other financial institutions. The Commission has recognized that the need for such costs arises from the effort requred to sell a life insurance policy as opposed to variable annuities, mutual funds or other securities. The most significant single expense incurred is the payment of first-year commissions to sales agents. Companies traditionally have paid commissions for the sale of whole life insurance of at least 50 percent, and frequently as much as 60 to 80 percent, of first-year premiums. Since the total sales and distribution expenses incurred at issuance commonly exceed the first-year premium for a policy (much less the permissible sales load), state insurance laws generally permit a company to pay these excess expenses out of the surplus in its general account and to amortize the cost over several years against future premiums.

In issuing flexible premium variable life insurance, insurance companies generally will continue to incur sales and distribution expenses in this pattern. These expenses generally are applicable to any given life insurance product and in large part are beyond any given issuer's control, because they are inherent in the nature of life insurance and the structure of the industry. In particular, it will be necessary for many companies to pay sales commissions comparable to those paid for traditional whole life insurance, if flexible premium variable life insurance is to be financially feasible. Many insurance salesmen still will actively market only those products that provide the accustomed level of compensation. Any reduction in the commission rate prevalent for insurance products that require a comparable sales effort would provide such sales agents with a disincentive to sell flexible premium variable life insurance to suitable customers. Thus, if the insurance-buying public is to be offered the choice between flexible premium variable life insurance and other products free from a conflict of interest on the part of many insurance salesmen, and if such salesmen are to have the financial incentive (relative to other products) necessary to make flexible premium variable life insurance feasible for issuers, many companies will need to pay traditional first-year commissions, which frequently will equal 50 percent or more of first-year premiums.

The most fundamental restrictions of Section 27 are contained in Sections 27(a)(1) and 27(h)(1), which limit the sales load under a periodic payment plan certificate to "9 per centum of the total payments to be made * * *" If flexible premium variable life insurance is to be a viable product for the industry, it is essential that the rule provide relief from these provisions permitting insurance companies to receive sales loads under the policies that are adequate to cover the sales and distributions costs of life insurance products. In addition, it is important that the relief be framed to permit companies prospectively to demonstrate that their policies meet the requirements of these provisions. Because flexible premium variable life will not require scheduled payments, the ability to rely on such prospective demonstrations of compliance not only will be an important part of the relief for the industry but also will facilitate the Commission's administration of the regulation.

Relief similar to that contained in Rule 6e–2 should be promulgated for flexible premium variable life insurance, modified as necessary to take into account the unique features of this new product. Rule 6e–2 balances the protections of the 1940 Act, the industry's need for relief, and the desirability of prospective determinations of compliance by providing that the sales load may not exceed 9 percent of the payments to be made during the lesser of 20 years or the insured's life expectancy based on the 1958 CSO Table.

The proposed rule provides the same period for compliance with the 9 percent requirement. Although the basis for the 20 year period stated in Rule 6e–2 is not entirely clear from the public record,

[28] Because front-end loads are more clearly contemplated by Section 27 (and are more familiar to the Commission in the context of variable life insurance products) than deferred sales loads, the proposed exemptions from Section 27 are first discussed with reference to front-end structures. The application of the proposed exemptions to sales loads other than front-end loads is separately discussed at pages 57–66.

that period apparently represents a conservative estimate of the duration of a scheduled premium variable life insurance policy, based on the industry's experience with conventional life insurance. The 20 year period or, if less, the insured's life expectancy based on the 1958 CSO Table remains a reasonable period for compliance.

It is, of course, also necessary to prospectively specify the premiums to be paid for the policy during this period. In the case of scheduled premium variable life insurance, the payments to be made are fixed by the policy. Flexible premium variable life insurance, however, generally will leave the amount and frequency of payments to the discretion of the policyholder. Nonetheless, established actuarial principles may be employed to determine prospectively the premiums which, while not contractually required, are appropriate for such a policy.

The proposed rule keys the exemptions from Sections 27(a)(1) and 27(h)(1) to a "guideline annual premium." That is, exemptions from Sections 27(a)(1) and 27(h)(1) generally are provided if the sales load charged during the policy periods equal to the lesser of 20 years or the insured's life expectancy based on the 1958 CSO Table does not exceed 9 percent of the sum of the guideline annual premiums that would be payable during such periods. The guideline annual premium concept is derived from Section 101(f) of the Internal Revenue Code.

The guideline annual premium is defined as the level annual premium, payable to the highest attained age at which a premium may be paid under a policy, that would provide the future benefits under the policy (subject to certain restrictions [29]), based on the 1958 CSO Table, a 4 per cent assumed interest rate, and the expenses specified in the policy. Regarding the components of this definition, it is anticipated that in most cases policyholders will contemplate paying premiums on a level annual basis. Use of the 1958 CSO Table is explained at pages 37–39. The 4 per cent rate of investment return is a historically sound, reasonable estimate of long-term investment performance, and was specified by Congress in Section 101(f)(1)(C) of the Code.

The significance of the guideline annual premium is that it represents the annual premium necessary to keep the policy in force for its life, provide the future benefits as specified, and provide a benefit at maturity (the cash value) equal to the initial death benefit, under the assumptions specified above. Thus, the guideline annual premium is the annual payment which would be contemplated and paid by a reasonable purchaser of insurance on the basis of these reasonable conservative assumptions.

The guideline annual premium is also equivalent to the annual fixed premium payable to obtain an equivalent insurance benefit under a scheduled premium variable life insurance policy containing the same actuarial factors. Indeed, because the premiums calculated for scheduled premium variable life insurance may take into account future benefits beyond the limitations specified above, the guideline annual premium for a "comparable" flexible premium variable life policy may be *less* than the fixed premium for the scheduled premium variable life policy. Accordingly, the guideline annual premium approach would yield a permissible dollar amount of sales load for a flexible premium variable life policy equal to or less than the amount of sales load for a flexible premium variable life policy equal to or less than the amount of sales load for an equivalent scheduled premium variable life policy under Rule 6e–2, a level which the Commission determined to be consistent with the public interest, the protection of investors, and the purposes of the 1940 Act.

The unique advantage of the guideline annual premium is its reliance on objective factors (the specified actuarial assumptions), certain general features of a class of policies (the maturity date and the policy charges), *and* certain individual features of each separate policy (the level and type of benefits), in appropriate combination. Accordingly, this approach has substantive and procedural virtues superior to those of other possible methods of specifying premium payments, as follows:

- A prospective demonstration of compliance with the exemption can be made with reference to the guideline annual premium, without inappropriately restricting sales load designs.[30]
- The approach permits sales loads to be designed and tested for compliance on the basis of a class of policies, rather than on an *ad hoc* policy by policy basis. The approach therefore should be relatively straightforward for the Commission to administer.[31] Furthermore, reference solely to individual policy features could result in an abuse of policyholders and inflated sales loads.
- The objective factors result in the equitable treatment of various purchasers of a given policy, and of the various issuers in the industry.
- The guideline annual premium approach permits companies to structure sales loads in a manner that reduces the opportunity for unfair manipulation by policyholders. Because of the unscheduled premiums permitted by flexible premium variable life insurance, there is a dnager that a policyholder would pay minimal premiums when front-end sales loads are heaviest, thereafter pay increased premiums (including an increment equal to the payments forgone to avoid the front-end load, with interest), and at all times enjoy the same level of insurance benefits. The sales expenses attributable to such a policyholder would be unfairly borne by other policyholders or the insurer. A test based on the guideline annual premium permits sales load structures that reduce this abuse.
- The guideline annual premium approach provides a basic similarity between the current requirements of the Internal Revenue Code and the federal securities laws, thereby minimizing possible incompatibilities and improving administrability and policyholder understanding.
- As discussed above, equal amounts of sales load are permitted under Rule

[29] In computing the guideline annual premium, (1) the net amount at risk should be assumed never to exceed the net amount at risk at issue, in order to avoid artificial inflation of the guideline amount through an assumption of increased, but not actually intended, future benefits, (2) the maturity date should be the latest date permitted under the policy, but not less than 20 years after issuer or, if earlier, age 95, also in order to avoid artificial inflation of the guideline amount, and (3) any endowment benefit should be assumed not to exceed the smallest death benefit at any time under the policy, in order to compute the guideline premium on a basis consistent with a traditional endowment policy. These possible abuses and restrictions were identified by Congress during the enactment of Section 101(f).

The proposed rule defines guideline annual premium to take account of incidental insurance benefits as well as the basic death benefit. Because the rule also limits "incidental insurance benefits" to conventional insurance benefits, which in most cases will be treated as an integral part of the basic policy (see page 75, *infra*), this definition is appropriate.

[30] In contrast, if compliance was tested on the basis of *actual* payments made under each individual policy, compliance could not be prospectively determined unless the sales load deduction could never exceed 9 percent of any payment.

[31] For example, testing compliance on the basis of the payment pattern each individual policyholder contemplates or "targets" would give rise to a Hobson's choice for issuers: (1) adopt only restrictive, and inappropriate, sales load schedules; (2) limit the flexibility of premium payments; or (3) design individual sales load schedules for each policyholder and demostrate compliance on a policy by policy basis.

6e–2 and the proposed rule for equivalent scheduled premium and flexible premium variable life policies, respectively.

This approach to sales load regulation requires further refinement in cases where the actual premiums paid in a policy year exceed the guideline annual premium. In light of the flexibility fundamental to the flexible premium variable life design, it is difficult to project the incidence and level of payments in excess of the guideline annual premium. By limiting the sales load charged with respect to such excess payments to 9 percent, the proposal assures that the aggregate sales load at the end of the lesser of 20 years or the insured's life expectancy mathematically could not exceed (under the assumptions specified above, including the assumed payment of the guideline annual premium) 9 percent of aggregate payments, provided that the sales load schedule with respect to guideline annual premiums complies with the general approach.

The proposed rule further provides that if excess premium is paid, the total sales load charged in that policy year also may not exceed 9 percent of the single premium necessary to pay up the policy until maturity under the above-mentioned actuarial assumptions. The payment of this "guideline single premium" gives rise to the inference that no further payments will be made; therefore, the sales load is appropriately limited in such policy year.[32]

3. *Front-End Sales Loads—Relief From Sections 27(a)(3) and 27(h)(3)*

The proposed rule provides an exemption from Sections 27(a)(3) and 27(h)(3) for flexible premium variable life insurance similar in substance to the relief provided in Rule 27a–2 and Rule 6e–2. In light of the proposed exemptions with respect to the 9 percent requirement, however, separate sales load schedules probably will be common with respect to aggregate annual payments up to the guideline annual premium and payments in excess of that amount. Accordingly, the requirement that sales loads remain level or decline over time as a percentage of payments is separately applied to these respective schedules. This approach neither unduly complicates sales load structures nor compromises the collateral effect of the level load requirement on compliance with the other provisions of Section 27.

4. *Front-End Sales Loads—Relief From Section 27(d)*

The appropriate exemption, if any, from the cash refund requirement of Section 27(d) was among the most important issues in the development of Rule 6e–2. The Commission recognized that expensive insurance-administrative procedures (*e.g.*, the high costs associated with issuance of a policy and the need to subsidize agents' commissions during early policy years) and the nature of scheduled premium variable life insurance justified an exemption from Section 27(d). *See* Investment Company Act Rel. No. 9482, *supra*, at 754. It was also aware that the financial feasibility of variable life insurance in large part depended on the relief provided from this section. *See id.* at 754–755; ALIA Letter Commenting on Proposed Rule 6e–2, SEC Administrative Proceeding File No. S7–554, at 18–27, 64 (March 31, 1976). The Commission ultimately increased the refund period stated in Section 27(d) from 18 to 24 months but reduced the excess sales load required to be refunded to the excess over 30 percent of first-year payments plus 10 percent of second-year payments. An alternative right to convert the policy to a traditional whole life insurance policy was also required. *See* investment Company Act Rel. No. 9482, *supra*, at 755.

The rationale for the exemption from Section 27(d) provided in Rule 6e 2 is equally applicable to flexible premium variable life insurance. Indeed, the consequences of the refund provisions for flexible premium variable life issuers are even more acute. Immediately upon the issuance of a policy, the insurer must subsidize substantial costs, including large first-year sales commissions, which ultimately should be recouped through charges as the policy persists. Because of the flexible payment structure fundamental to this policy design, however, the company will bear these expenses without even the level of assurance present in scheduled premium variable life insurance regarding future payments in early years. This is not to say that the industry anticipates poorer persistency for flexible premium variable life insurance than for scheduled premium variable life insurance. Rather, it is a recognition that some purchasers of either product will cease making payments or, in the case of flexible premium variable life, will make lower premium payments in early years. Scheduled premium variable life insurers can temper that uncertainty by anticipating the precise level of payments to be made if a policy continues in force. In contrast, the flexibility of premium variable life insurance will compound the uncertainty for issuers of these policies.

The import of the relief from Section 27(d) should not be underestimated. Most if not all flexible premium variable life issuers will design their products to avoid, in application, the scope of the requirement; refunds are an extraneous administrative complication in an already complex product, they may inappropriately encourage lapsation, and many companies may not be in a position to fully charge back first-year commissions against sales representatives if excess sales loads are refunded. Therefore, the exemption from Section 27(d) effectively will function as the limitation on sales loads charged during the first 24 months. These lower limits will increase any strain on the issuer's surplus during early policy years. Indeed, the unexpectedly slow proliferation of variable life issuers may be due, in part, to the inability of many companies to tolerate such a strain. As discussed above, this problem may be more acute for flexible premium variable life insurance, and many companies may well determine not to issue this new product if the charges "permitted" under the exemption from Section 27(d) are inadequate. The federal securities laws should not be administered to effectively preclude otherwise qualified companies from marketing insurance products on this ground.

For these reasons, the proposed rule modifies the amount of excess sales loading subject to the refund right from the analogous amount specified in Rule 6e–2. The amount of sales loading to be refunded equals the excess over the sum of (1) the lesser of 30 percent of the guidelines annual premium or 50 per cent of actual first-year premium payments, plus (2) the lesser of 10 percent of the guideline annual premium of 17 percent of actual second-year premium payments, plus (3) 9 percent of payments made in either year in excess of the guideline annual premium. This approach will readily mesh with the sales annual structures suggested by the other proposed exemptions from Section 27. In those cases where equivalent premiums (*i.e.*, the fixed premium for scheduled premium variable life insurance and the guideline annual premium for flexible premium variable life insurance) are paid for equivalent policies, the proposal requires the refund of an amount equal to the amount

[32] For example, if a policyholder chooses to treat a flexible premium variable life insurance policy as a single premium product and pays the guideline single premium in the first policy year, the guideline single premium limitation restricts the sales load to 9 percent of the reasonably anticipated payments (*i.e.*, that single payment), even if the policy generally imposes larger front-end loads.

required by Rule 6e-2. At the same time, the 50 percent and 17 percent limits operate to grade off the amount to be refunded when a policyholder chooses actually to pay less than the guideline annual premium during the first two policy years, and will provide the company with a reasonable level of charge for sales and promotional expense. In this case, the flexible premium variable life policy will reflect a greater pure insurance element than an equivalent scheduled premium variable life insurance policy. In such circumstances, the proposed relief appropriately reflects the front-end life insurance sales and distribution system and the early subsidization of life insurance policy costs (including the fact that a fraction of such costs in the first policy year are fixed per policy sold and are not a function or premium payments). At the same time, when coupled with section 27(a)(2) of the 1940 Act and the proposed exemptions from section 27(a)(1) and 27(h)(1), this refund right preserves the basic investor protections of these provisions while making flexible premium variable life insurance financially feasible for more insurance companies (thereby providing additional investor protection through increased competition in the marketplace.

As a corollary to the basic refund rule, Rule 6e-2 requires during the first 24 months the refund of the present value of any nonforfeiture insurance option then in force to which excess sales loading was applied upon the nonpayment of a premium for a scheduled premium variable life insurance policy. Because of the radically different design of flexible primium variable life insurance with respect to lapsation (notably, the absence of nonforfeiture options with cash value),[33] the proposed rule does not retain this provision.

The proposed rule contains the alternative conversion right prescribed in Rule 6e-2. The proposed rule does not, however, *require* that the flexible premium variable life policy be converted to a conventional whole life policy (*i.e.*, to a policy which provides for "fixed death benefits and cash surrender values"). The proposed rule instead permits the conversion to be made to *any* specified life insurance policy (including term insurance or a conventional whole life policy) other than a fixed premium or flexible premium variable life insurance policy. So long as the policyholder has the right to convert to a fixed benefit policy without providing evidence of current insurability, the purposes apparently underlying the conversion right will be satisfied. Also, because the relationship between the amount of insurance benefit and the net amount at risk may vary significantly with the death benefit option elected, the cash value, and policy design the new policy is permitted to provide *either the same amount of insurance benefit or the same net amount at risk as the converted flexible premium variable life policy.*

5. *Sales Loads Other Than Front-End Loads*

Section 27 of the 1940 Act was drafted with reference to mutual fund contractual plans, which imposed only front-end sales loads. However, as the Commission is aware from other contexts, notably its regulation of variable annuity contracts, other sales load structures are appropriate and, in many cases, desirable in products subject to 1940 Act regulation. These other possible forms include (1) a back-end sales load imposed, if at all, upon a complete or partial surrender or withdrawal of cash value, (2) a periodic sales load charge against cash value, computed as a fixed dollar amount, as a percentage of cash value or on some other basis,[34] and (3) a combination of front-end, back-end, and periodic charges.

In flexible premium variable life insurance products, sales loads other than front-end loads would share the characteristic of deferring the assessment of the charge until some date after the allocation of net premium to the separate account. Because the sales load charge would not be immediately deducted from a payment, a greater percentage of each premium would be allocated to the separate account than if the insurer had imposed a front-end sales load. Accordingly, there would be a relatively larger "investment" upon which investment earnings could compound. The policyholder would realize a greater return, vis a vis a front-end loaded product, from the same positive investment experience applied with respect to the same gross premium.

Moreover, at least under many back-end sales load schedules, the charge would decline gradually to 0 percent over a number of years and, if the policyholder persisted for the required period, no sales load would ever be assessed. This policyholder both would avoid sales loading altogether and would enjoy earnings on a relatively larger net investment. Even if a sales load ultimately were charged (either periodically or upon surrender or withdrawal), the deferral of the charge would confer an economic benefit on the policyholder through investment earnings, up to the time of assessment, on the load charged. The economic effect would be the same as if the insurer had charged a front-end charge at the same rate as the back-end or periodic charge, invested that amount in the separate account for its own benefit, and then credited a portion of that amount plus earnings to the policyholder daily until the day the deferred charge actually is assessed. Thus, the deferral of the sales load, even if the charge ultimately is assessed, would benefit the policyholder.

In addition, the flexible premium variable life policyholder realizes immediate and substantial benefit throughout the life of the policy: The insurance protection fundamental to flexible premium variable life insurance. In effect, the deferred load permits the policyholder to enjoy the primary benefits afforded by flexible premium variable life insurance without incurring a sales load, unless and until the plicy is totally or partially surrendered or otherwise lapses.

It is contemplated that flexible premium variable life insurance policies will be issued with other than front-end loads. In the case of variable annuities, back-end loads have been limited at any time to 9 percent of aggregate purchase payments received under the contract, and deferred sales load percentages have not increased over the duration of the contract.[35] The nature of the relief, however, that is both consistent with the purposes and policies of the 1940 Act and necessary to accommodate deferred sales loads in flexible premium variable life insurance differs from that traditionally accorded variable annuities. The relief must reflect the higher distribution costs characteristic of life insurance products. Absent such relief, insurance companies would be subjected to a substantial financial

[33] For an elaboration of these differences, see pages 21–22, *supra*.

[34] It is intended that the proposal provide all the relief from the 1940 Act necessary to permit sales loads in the form of periodic charges against cash value. No relief from Section 12 or Rule 12b–1 has been proposed, in the belief that these provisions are inapplicable to a charge (in whatever form) to recover sales and distribution expense that complies with the proposed relief from Section 27. Should the Commission take a different view of the application of Section 12, Rule 12b–1, or any other provision of the 1940 Act, additional exemptions will be necessary.

[35] In this respect, the exemptions from Section 27 for variable annuities could be characterized as treating back-end loads as if they were front-end loads.

disincentive to adopt deferred load structures in lieu of front-end structures, to the detriment of policyholders. The relief should also be sufficiently general to allow the diversity of possible combinations of sales load structures involving a complete or partial deferral of charges; that is, the rule should fairly regulate these varying structures while foreseeing and foreclosing any potential abuse each separate structure might entail. Moreover, the relief should recognize the inherent difficulty in applying the 1940 Act regulatory structure to a flexible premium insurance product with a deferred sales load.

The proposed rule accounts for these considerations by providing that a policy imposing a sales load other than a front-end load is exempt from the relevant provisions of Section 27 if the policy is economically as advantageous to the policyholder as would be an otherwise identical front-end loaded policy which complied in all respects with Section 27 and the exemptions contained in the proposed rule. Specifically, under the proposed rule, a flexible premium variable life insurance policy with other than a front-end sales load ("the actual policy") is exempt from Sections 27(a)(1), 27(a)(3), 27(d), [36] 27(h)(1), 27(h)(3), and 27(a)(4) of the 1940 Act if, at all durations through maturity, the cash surrender value, death benefit, and any endowment benefit of the actual policy is not less than the cash surrender value (including the proceeds from any applicable refund right), death benefit, and endowment benefit of a hypothetical policy ("the test policy") that is identical to the actual policy in all respects except that it charges a front-end sales load in any manner satisfying the Act and the proposed exemptive rule.

This approach to the regulation of deferred sales loads offers significant advantages. It recognizes that, at least in this context, the direct application of the strictures of Section 27 to deferred sales charges is at best strained. It also recognizes that companies are free to adopt front-end loads if they choose, and does not penalize, through a strained application of Section 27, issuers which adopt deferred sales load structures benefitting policyholders. Instead, it allows the issuer a *potential* sales load equivalent in value to the sales load it *actually* could have received with a front-end load design. Because this approach is framed in relatively general terms, it can evenhandedly regulate the wide range of possible deferred sales load structures, without a limiting reference to particular designs.

Finally, this approach is highly workable. It lends itself readily to a prospective demonstration of compliance if certain actuarial assumptions are made. In order to test representative payment patterns and to police possible abuses, the proposed rule specifies that: (1) Payments of the guideline annual premium for the actual policy and the guideline single premium at issue for the actual policy must both be tested in the alternative, (2) withdrawals or surrenders are assumed *not* to occur prior to the duration being tested, and (3) a reasonable net annual rate of return such as 4 percent is assumed. Under these actuarial assumptions, the computations necessary for this prospective demonstration are relatively mechanical, and probably in practivc could reduce to a testing of worst case examples. A sample demonstration of the type contemplated is attached as Appendix D. Accordingly, this approach permits both efficient review by the Commission staff of the compliance of individual sales load designs *and* regulation of deferred loads in a rule of general applicability.

This "economic value" approach to the regulation of sales loads other than front-end loads does not preclude the possibility that sales loads would exceed 9 percent of, generally, twenty years' payment.[37] There could be circumstances where the amount of the deferred sales charge would exceed 9 percent of total payments over twenty years, depending on the precise sales load schedule and the investment performance of the separate account. Practical factors tend to reduce the possibility that the 9 percent of payments limit would be exceeded. For example, the 9 percent limit is framed in terms of gross payments, but the cash value of the policy will reflect ongoing deductions of various charges (*e.g.*, cost of insurance and administrative charges) from either gross premiums or the account. Particularly in early policy years, the combination of large front-end administrative charges and the brief period of time during which earnings could compound will tend to reduce the applicable deferred sales load as a percentage of gross payments. Moreover, as discussed above, back-end sales loads in particular often decline to 0 percent over a period of years. Thus, for a deferred sales load to exceed 9 percent of gross payments, the investment performance of the separate account would have to more than compensate for the effect of charges against the policy and any decremental sales load schedule. There is, of course, no assurance that investment performance will be so favorable.

To the extent that deferred sales loads might exceed 9 percent of twenty years' payments, the proposed rule provides an exemption from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. The deferred loading can be viewed as compensating the issuer for the time value of money. Obviously, a dollar amount of sales load received periodically or at surrender would be worth less to an issuer than the same amount received at the time a premium is paid. This is because the issuer would not have had the use of the money for the period between premium payment and assessment of the charge, and would have had to find other ways to pay for the expenses incurred in the sales of the policy. To the extent that favorable investment experience of the separate account would cause the dollar amount of deferred sales charges to exceed the 9 percent limitation, the excess will reflect the future value of the dollar amount of sales load that the issuer had the option of realizing at an earlier date by deducting it as a front-end load from gross premium. In this sense, the excess results from investment earnings on what can be described as the issuer's money.

Additional considerations support the proposal in the case of back-end loads. Flexible premium variable life insurance will be designed to provide insurance protection for the whole of life and to set the level of charges so as to cover expenses expected to be incurred or amortized over a protracted preiod of time. In other words, each time an issuer sells a policy, it will anticipate receiving a stream of income for a period of years, arising from charges for the cost of insurance, for administration, and for mortality and expense risks and other contingencies, that will cover the expenses incurred in selling and administering the policy and paying death claims during that period.[38] A

[36] The required right to convert to a fixed benefit policy is retained, under the proposal.

[37] A deferred charge limited to 9 percent of twenty years' premiums, where the insurance company gives up the economic value of a comparable front-end load, would necessarily comply with the 9 percent of payments restriction. The following discussion therefore pertains only to deferred loads *not* expressly limited to 9 percent of twenty years' payments.

[38] The insurer will bear the risk that policy charges will be insufficient to cover expenses (including death benefits). The insurer will draw down its surplus, or realize contributions to its surplus, to the extent that monies collected from charges are less or more, respectively, than expenses incurred.

back-end sales charge can be viewed, in principle, as the functional equivalent of those revenues that the insurer would have realized from such policy charges if the policyholder had persisted for the requisite period of years rather than surrendered and that would have paid, in whole or in part, for expenses incurred but not yet amortized. The back-end sales charge, generally speaking, thus will compensate the insurer for the future income stream from charges that the insurer anticipated receiving when it sold the policy, but loses as a result of surrender prior to the end of the anticipated life of the policy.

In this regard, a back-end sales charge will roughly balance the interests of surrendering versus persisting policyholders. The economic effect of having no back-end charge can be viewed as permitting a policyholder to surrender without having paid the expenses incurred in the sale of his policy. In the absence of a back-end sales charge, the unpaid expenses ultimately would have to be borne by persisting policyholders. The back-end sales charge thus operates as a mechanism to shift, from persisting policyholders to a surrendering policyholder, expenses incurred in the sale of the policy being surrendered.

For all these reasons, the proposed rule does not as a matter of law limit deferred sales loads to 9 percent of twenty years payments.

Finally, the proposed rule provides exemptions from Sections 2(a)(32), 26(a), 27(c), and 27(d) to the extent necessary to permit the assessment of sales loads upon redemption or other than against gross premium.

6. *Sales Loads in the Event of Adjustments in Face Amount*

This petition does not address the appropriate treatment of sales loads charged in connection with or following adjustments in the face amount of insurance after issuance of a flexible premium variable life insurance policy. The proposal with respect to this significant issue remains under consideration. An amendment to the petition detailing the relief necessary in this regard will be filed in the near future.

7. *Relief from Sections 27(c)(1), 27(d) and 2(a)(32)*

Rule 6e–2 provides certain exemptions from the redeemability provisions of Section 27 (an exemption which arguably should be extended to Section 2(a)(32) of the 1940 Act), primarily because the insurance nature of scheduled premium variable life insurance prevents the "redemption" of a pro rata share of the separate account's assets within the strict meaning of the 1940 Act. *See* Investment Company Act Rel. No. 9482, *supra*, at 753; *see also* Rel. No 8868, *supra*, at 592. This is an inherent characteristic of any life insurance product funded by a separate account, and the proposed rule contains a similar exemption, with one modification.

A scheduled premium variable life insurance policy lapses upon nonpayment of a premium before the end of the appropriate grace period. Upon lapsation, the policyholder may elect to receive a nonforfeiture option or, as required by Rule 6e–2, the cash surrender value. Since lapsation of a scheduled premium variable life policy results solely from a failure to pay premiums when due and is in no way dependent on the amount of the policy's cash value, the right to elect to receive the cash surrender value is consistent with the design of the product.

In contrast, as reflected in Article IV, Section 3(b)(2) of the Variable Life Insurance Model Regulation, a flexible premium variable life insurance policy may lapse only when the amounts available under the policy are less than the authorized charges necessary to keep the policy in force until the next policy processing day and the resultant grace period expires. This typically will occur only when the cash surrender value of the policy is minimal. In such a case, the administrative burden and expense to the insurance company of providing a cash "redemption" will be extremely high in relation to the benefit received by the policyholder; the cost could easily exceed the cash surrender value (if any). Moreover, in these circumstances, the application of the cash surrender value to a nonforfeiture option rather than to a cash redemption is equitable to both the policyholder and the insurer. If the amount available under the policy is insufficient to pay current charges and no additional premium is paid, the policyholder will receive at least some free insurance protection during the grace period. It is fair to permit the insurer to recoup some of its cost of such insurance provided to the policyholder, to the extent that the cash surrender value is sufficient to pay part of the authorized charges. Therefore, the proposed exemption from the redeemability requirements permits, during the grace period, the mandatory application of the cash surrender value to the purchase of a nonforfeiture option specified in the policy.

8. *Relief From Section 27(e), Rule 27e–1, Section 27(f), and Rule 27f–1*

The proposed rule substantially retains the exemptions in Rule 6e–2 from the "free look" and notice requirements of Section 27. Certain revisions, however, have been made in these exemptions to reflect industry practice and the nature of flexible premium variable life insurance.

With respect to the notice requirements, three modifications have been made. First, it is a common industry practice to provide notices to policyholders (especially in connection with the issuance of a policy) through personal delivery by sales representatives. The proposed rule permits this practice as an alternative to notice by mail. Because scheduled premium payments are not required by the flexible premium variable life insurance, the obligation to give a follow-up notice of the right of withdrawal and refund cannot be linked to the nonpayment of a premium. In the interest of both simplicity and investor protection, the proposed rule instead requires this notice to be provided within 30 days after each of the first two policy anniversaries (or such other date during the first two policy years as specified by the company). At the same time, the proposed rule provides that the refund right does not expire until 15 days after the final notice is given. Such an approach permits the requisite notices to be provided with the annual statements and reports required by Article IX of the Variable Life Insurance Model Regulation, resulting in improved convenience and economies for both policyholders and companies. Finally, the proposed rule allows companies to design their own notices containing certain information prescribed in the rule (which in certain regards may differ from the content of notices developed for scheduled premium variable life insurance because of the significant differences between the products). Notices tailored by each company to its individual policy design likely will be more understandable to policyholders than a standard form specified by the Commission.[29]

With respect to the "free look" requirement, certain amendments to the Variable Life Insurance Model Regulation are reflected in the proposed rule. Both Rule 6e–2 and, prior to its amendment, the Model Regulation required the refund of *all* payments made upon the exercise of the "free look" right. In contrast, Section 27(f) requires the refund of the value of the account at the time of the refund plus

[29] The Commission has permitted at least one scheduled premium variable life issuer to utilize its own notice of the right of withdrawal and refund. *See* Investment Company Act Rel. Nos. 8888, *supra*.

the difference between gross and net payments. Article IV, Section 3(a)(5) of the Model Regulations was amended by the NAIC in December 1982 to provide an analogous result. The rationale for the amendment was that it was inequitable to impose the entire investment risk on the insurer during the free look period; investment performance, either positive or negative, with respect to *net* premiums should instead be reflected in the amount to be returned.[40] (The insurer would still bear the investment risk with respect to any charges, which must be returned in full.) The proposed rule therefore specifies an amount to be refunded consistent with Section 27(f) and the Model Regulation as amended.

In addition, the proposed rule does not link the free look right to the execution of the insurance application. Rule 6e–2 extends the free look right until (among other cumulative dates) 45 days after the execution of the application. This provision was apparently intended to conform the rule to the existing free look provision in the Model Regulation. *See* Investment Company Act Rel. No 8691, *supra*, at 366. Article IV, Section 3(a)(5) of the Model Regulation was amended in 1982 to delete the reference to the execution of the insurance application. The proposed rule conforms to this amendment.

C. Other Provisions

As noted above, the proposed rule generally provides exemptions for flexible premium variable life insurance which correspond in substance to those contained in Rule 6e–2. In addition to the modifications in the definitional and sales load provisions discussed above, however, the proposed rule contains certain other variations from Rule 6e–2.

1. *Custodial Provisions*

With respect to Section 17(f), the proposed rule provides exemptions relief if either Rule 17f–2 or the conditions stated in Rule 6e–2 are satisfied. A separate exemption also is provided from Rule 17f–2 to the extent necessary for compliance with state insurance laws and established insurance company procedures. As the Commission is aware from numerous exemptions granted to issuers of variable annuity contracts,[41] state insurance laws and regulations and the issuer's general procedures may impose technical requirements inconsistent with those contained in Rule 17f–2 regarding, for example, the number of employees of the separate account who may have access to the securities and similar investments of the account, and access by employees of the insurance company (as opposed to employees "of" the separate account) and by employees or representatives of the state insurance department or the NAIC. The purpose of these state laws and company procedures is the protection of policyholders and the safeguarding of the separate account's assets. The insurance company and its operations and procedures, including its safekeeping of investments, are subject to the supervision of the state insurance department, and the company remains liable to policyholders until its obligations have been fully discharged. Accordingly, adequate protections will be afforded policyholders and this exemption is justified.

An additional exemption is provided from Sections 27(c)(2), 26(a)(1) and 26(a)(2) to permit the insurer to hold the securities and similar investments of the separate account in book entry form, subject to the provisions of Section 17(f) and Rule 17f–4, where applicable. Analogous exemptions have been routinely granted to issuers of variable annuity contracts.

2. *Pricing Provisions*

The proposed rule contains technical clarifications of the exemption provided in Rule 6e–2 from Sections 22(d), 22(e), and 27(c)(1) and Rule 22c–1. By requiring daily valuation as of the close of the New York Stock Exchange, the Rule 6e–2 exemption is not fully consistent with Rule 22c–1 in its current form. To rectify this inconsistency, the proposed rule authorizes the board of directors of the separate account annually to specify the daily time for valuation. Furthermore, as was recognized in Rule 6e–2, daily determinations that have no practical import should not be required, in order to avoid unnecessary administrative burdens. The proposed rule refines the Rule 6e–2 exemption in two ways to account for this concern. First, the determination of cash surrender value can readily be made from cash value when relevant, but may require an additional computation. The proposed rule therefore specifies that "cash value" only need be "determinable" daily. In addition, if the terms of the flexible premium variable life policy are such that charges and investment experience do not daily affect the cash value and the death benefit, respectively, then daily determinations taking such factors into account are not required, unless necessary for compliance with state insurance laws.

3. *Shared Funds*

The proposed rule permits a flexible premium variable life insurance separate account organized as a unit investment trust to invest its assets in registered management investment companies which offer their shares to other purchasers as well. This provision is intended to allow insurance companies to utilize the same mutual fund complex as a funding vehicle for variable annuities and for scheduled premium variable life insurance as well as for flexible premium variable life insurance. Although a similar provision in Rule 6e–2 is limited to funds used solely for scheduled premium variable life insurance, increased pooling, diversification, and scale economies in expenses, as well as avoidance of potential conflicts of interest among similar investment portfolios, would result if the same mutual funds were used for all variable contracts. These benefits are important enough to justify this practice, the proposed rule does not impose any conditions on such funding methods, because it is unclear what conditions, if any, would be appropriate. It is intended that any appropriate conditions would be incorporated in the proposed rule.

4. *Definitions*

Certain changes from the definitions contained in Rule 6e–2 are necessary in the proposed rule. The definitions of "incidental insurance benefit," "guaranteed death benefit," and "variable death benefit" reflect the structural differences between scheduled premium and flexible premium variable life insurance discussed elsewhere. In particular, the term "incidental insurance benefit" has been refined to include those insurance benefits lacking discrete cash values that vary with the investment performance of the separate account supporting the policy. Such benefits are treated as "fixed" for purposes of the proposed rule although the *amount* of insurance purchased may change with

[40] *See* Variable Life Insurance Model Regulation, art. IV, § 3(a)(5), commentary at 59–60 (1982).

[41] For examples of these exemptions, see the following 1940 Act releases: Rel. No. 12307 (March 18, 1982) (proposed), Rel. No. 12370 (April 13, 1982) (order); Rel. No. 12276 (March 5, 1982) (proposed), Rel. No. 12410 (April 30, 1982) (order); Rel. No. 12103 (December 14, 1981) (proposed), Rel. No. 12150 (January 8, 1982) (order); Rel. No. 14482 (December 8, 1980) (proposed), Rel. No. 11537 (January 6, 1981) (order); Rel. No. 11083 (March 13, 1980) (proposed), Rel. No. 11123 (April 6, 1980) (order); Rel. No. 9120 (January 12, 1976) (proposed), Rel. No. 9153 (February 11, 1976) (order); Rel. No. 8952 (September 24, 1975) (proposed), Rel. No. 8998 (October 21, 1975) (order).

investment experience.[42] Similarly, a benefit is treated as "incidental" even if its duration might depend on investment experience.

The definition of "payment" has also been modified. As used in Rule 6e-2, the term "payment" excludes charges for substandard risks, incidental insurance benefits, and more frequent than annual payments, for purposes of determining the amount upon which sales loads and refunds are computed. These charges were so excluded to provide consistent sales load regulation for contract with the same variable benefits and to provide additional relief from the refund requirement of Section 27(d). *See* Investment Company Act Rel. No. 9482, *supra*, at 754. To the extent that a flexible premium variable life policy treats such charges in the same manner as a scheduled premium variable life policy—effectively, as separate premiums which are deducted from gross premiums prior to the allocation of net premiums to the separate account—the proposed rule excludes the charges for the above-mentioned purposes. In many cases, however, these enumerated charges probably will be treated in a different manner under flexible premium variable life insurance, because of the flexibility of the product. Fixed premium payments may not be required for these coverages; rather, charge may be periodically deducted from cash value, in the same manner as the cost of insurance charge and certain other charges. In such cases, when a premium payment is received, it will not be possible to allocate a portion of it to these specified charges. Instead, the premium will be treated as paid toward *all* the charges under the policy, any front-end sales load will be computed on the basis of the gross payment received, and the net payment will be transferred to the separate account without earmarking. Under these circumstances, the proposed rule does not exclude the charges enumerated in the definition in Rule 6e-2 from the term "payment."

For the purpose of clarity, precise definitions of "cash value," "cash surrender value," and "net investment earnings" are provided.

Finally, to resolve any possible uncertainty with respect to the status under the 1940 Act of regulated insurance companies the primary and predominant business of which is the inssuance of scheduled premium or flexible premium variable life insurance (or of both), the proposed rule provides that such issuers are "insurance companies" within the meaning of Section 2(a)(17) of the 1940 Act.

D. Rule 6c-3

Rule 6c-3 provides that a separate account which meets the requirements of Rule 6e-2 but which registers under the 1940 Act, together with certain related persons, shall nonetheless be entitled to the relief provided in Rule 6e-2, except for the exemptions from Section 7 and 8(a) of the Act. The adoption of this rule at the same time as Rule 6e-2 reflected the fact that the exemptions contained in Rule 6e-2 for unregistered separate accounts merely tailored the provisions of the 1940 Act to scheduled premium variable life insurance without providing unconditional relief from those provisions necessary for investor protection. Such exemptions (other than those from Sections 7 and 8(a)) were not predicated on the registration status of the separate account, and companies might prefer to register such separate accounts for external reasons. *See* Investment Company Act Rel. No. 9482, *supra*, at 756. A rule analogous to Rule 6c-3 is proposed for flexible premium variable life insurance.

V. Text of Proposed Rule Under Section 6(e)

(a) A separate account, and the investiment adviser, principal underwriter and depositor of such separate account, shall, except for the exemptions provided in paragraph (b) of this Rule, be subject to all provisions of the Act and rules and regulations promulgated thereunder as though such separate account were a registered investment company issuing periodic payment plan certificates if:

(1) Such separate account is a separate account within the meaning of Section 2(a)(37) of the Act and is established and maintained by a life insurance company pursuant to the insurance laws or code of: (i) Any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies to the extent necessary with Rule 7d-1 under the Act;

(2) The assets of the separate account are derived solely from the sale of flexible premium variable life insurace policies as defined in paragraph (c)(1) of this Rule, the sale of variable life insurance contracts as defined in paragraph (c)(1) of Rule 6e-2, funds corresponding to dividend accumulations with respect to such policies or contracts, and advances made by the life insurance company which established and maintains the separate account ("life insurer") in connection with operation of such separate account;

(3) the separate account is not used for variable annuity contracts or contract liabilities not involving life contingencies;

(4) the separate account is legally segregated, and that portion of its assets having a value equal to, or approximately equal to, the reserves and other contract liabilities with respect to such separate account are not chargeable with liabilities arising out of any other business that the life insurer conduct;

(5) the assets of the separate account have, at each time during the year that adjustments in the reserves are made, a value at least equal to the reserves and other contract liabilities with respect to such separate account, and at all other times, except pursuant to an order of the Commission, have a value approximately equal to or in excess of such reserves and liabilities; and

(6) the investment adviser of the separate account is registered under the Investment Advisers Act of 1940.

(b) If a separate account meets the requirements of paragraph (a), then with respect to flexible premium variable life insurrance policies funded by such separate account, such separate account and the other persons described in paragraph (a) shall be exempt from the provisions of the Act as follows:

(1) Section 2(a)(35), provided, however, that the term "sales load," as used in the Act and rules and regulations thereunder, shall have the meaning set forth in paragraph (c)(4) of this Rule.

(2) Section 7.

(3) Section 8, to the extent that:

(i) For purposes of paragraph (a) of Section 8, the separate account shall file with the Commission a notification of Form ——— which identifies such separate account; and

(ii) For purposes of paragraph (b) of Section 8, the separate account shall file with the Commission a form to be designated by the Commission within ninety days after filing the notification of Form ———, provided, however, that if the fiscal year of the separate account ends within this ninety day period the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 to the extent that:

(i) The eligibility restrictions of Section 9(a) of the Act shall not be applicable to those persons who are officers, directors and employees of the

[42] For example, a rider for variable annuity benefits funded by its own variable cash value is not intended to be treated as an incidental insurance benefit. In contrast, an accidental death benefit, the *amount* of which is indexed to the basic death benefit provided under the policy, would be treated as an incidental insurance benefit.

life insurer of its affiliates who do not participate directly in the management or administration of the separate account or in the sale of flexible premium variable life insurance policies funded by such separate account; and

(ii) A life insurer shall be ineligible pursuant to paragraph (3) of Section 9(a) of the Act to serve as investment adviser, depositor of or principal underwriter for a flexible premium variable life insurance separate account only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of Section 9(a) participates directly in the management or administration of the separate account or in the sale of flexible premium variable life insurance policies funded by such separate account.

(5) Section 13(a) to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by policyholders or the board of directors of the separate account may be disapproved by the life insurer, provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(A) Such change would be contrary to state law; or

(B) Such change would be inconsistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques utilized by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account;

(iii) Any action taken in accordance with paragraph (b)(5) (i) or (ii) and the reasons therefor shall be disclosed in the proxy statement for the next meeting of flexible premium variable life insurance policyholders of the separate account.

(6) Section 14(a), provided that until the separate account has total assets of at least $100,000 the life insurer shall have: (i) A combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet, of such life insurer contained in the registration statement, or any amendment thereto, relating to flexible premium variable life insurance policies funded by such separate account filed pursuant to the Securities Act of 1933, as amended.

(7)(i) Section 15(a) to the extent this section requires that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of the registered company, provided that:

(A) Such investment adviser is selected and a written contract is entered into before the effective date of the registration statement under the Securities Act of 1933, as amended, for flexible premium variable life insurance policies which are funded by the separate account, and that the terms of the contract are fully disclosed in such registration statement, and

(B) A written contract is submitted to a vote of flexible premium variable life insurance policyholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown;

(ii) Sections 15(a), (b) and (c) to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by policyholders or the board of directors of the separate account may be disapproved by the life insurer, provided that such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by policyholders or the board of directors of the separate account may be disapproved by the life insurer, provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(1) The rate of the proposed investment advisory fee will exceed the maximum rate that is permitted to be charged against the assets of the separate account for such services as specified by any flexible premium variable life insurance policy funded by such separate account; or

(2) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques utilized by the current investment adviser to the separate account, or advise the purchase or sale of securities which would be inconsistent with the investment objectives of the separate account or which would vary from the quality and nature of investments made by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account;

(D) Any action taken in accordance with paragraph (b)(7)(ii) (A), (B) or (C) and the reasons therefore shall be disclosed in the proxy statement for the next meeting of flexible premium variable life insurance policyholders of the separate account.

(8) Section 16(a) to the extent that:

(i) Persons serving as directors of the separate account prior to the first meeting of such account's flexible premium variable life insurance policyholders are exempt from the requirement of Section 16(a) of the Act that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, provided that:

(A) Such persons have been appointed directors of such account by the life insurer before the effective date of the registration statement under Securities Act of 1933, as amended, for flexible premium variable life insurance policies which are funded by the separate account and are identified in such registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for such account shall be held at the first meeting of flexible premium variable life insurance policyholders after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to policies funded by such account, which meeting shall take place within one year after such effective date, unless the time for holding such meeting shall be extended by the Commission upon written request for good cause shown;

(ii) A member of the board of directors of such separate account may be disapproved or removed by the appropriate insurance regulatory authority if such person is ineligible to serve as a director of the separate account pursuant to insurance law or regulation of the jurisdiction in which the life insurer is domiciled.

(9) Section 17(f) to the extent that the securities and similar investments of a separate account organized as a management investment company may

be maintained in the custody of the life insurer or an insurance company which is an affiliated person of such life insurer, provided that either the provisions of Rule 17f–2 are satisfied or:

(i) The securities and similar investments allocated to such separate account are clearly identified as to ownership by such account and such securities and similar investments are maintained in the vault of an insurance company which meets the qualifications set forth in paragraph (b)(9)(ii), and whose procedures and activities with respect to such safekeeping function are supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank, which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of or agents authorized by the Commission, representatives of insurance regulatory authorities, independent public accountants for the separate account, accountants for the life insurer and to no more than 20 persons authorized pursuant to a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated insurance company in whose vault such investments are maintained (if applicable), and access to such securities and similar investment shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, as amended, or such person as may be permitted by the Commission, or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated insurance company, shall sign a notation in respect of such deposit, withdrawal or order which shall show: (A) The date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner or acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person the name of such person. Such notation shall be transmitted promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who shall not be a person designated for the purpose of paragraph (b)(9)(iii). Such notation shall be on serially numbered forms and shall be preserved for at least one year;

(vi) Such securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such separate account. A certficate of such accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be transmitted to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authorities pursuant to any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of Section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Rule 17f–2, to the extent necessary for compliance with insurance laws and regulations of the jurisdiction in which the securities and similar investments allocated to a separate account organized as a management investment company will be held, or with the established procedures of the life insurer.

(11) Section 18(i) to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the registered management investment company:

((A) Flexible premium variable life insurance policyholders shall have one vote for each $100 of cash value funded by the separate account with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to policyholders pursuant to paragraph (b)(11)(i)(A), with fractional votes allocated for amounts less than $100, provided that after the commencement of sales of flexible premium variable life insurance policies fund by the separate account, the life insurer shall cast its votes for and against each matter which may be voted upon by policyholders in the same proportion as the votes cast by policyholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days prior to any meeting at which such vote is held, provided that if a quorum is not present at the meeting, the meeting may

be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in Section 16(c)) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this Rule.

(12) Section 19 to the extent that the provisions of this section shall not be applicable to any dividend or similar distribution paid or payable pursuant to provisions of participating flexible premium variable life insurance policies.

(13) Sections 22(d), 22(e) and 27(c)(1) and Rule 22c–1 promulgated under Section 22(c) to the extent:

(i) That the amount payable on death and the cash value of each flexible premium variable life insurance policy shall be determinable on each day during which the New York Stock Exchange is open for trading, not less frequently than once daily as of such specific time during the day as determined at least annually by a majority of the board of directors of the investment company, except that:

(A) To the extent that the calculation of the cash value reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees and distribution expenses, such deductions need only be made at such times as specified in the policy or as necessary for compliance with insurance laws and regulations; and

(B) Unless necessary for compliance with insurance laws and regulations, the amount payable on death need not be calculated on a day during which the New York Stock Exchange is open for trading if the provisions of the policy are such that the investment experience of the separate account does not increase or decrease such amount on that day;

(ii) Necessary for compliance with this Rule or with insurance laws and regulations and established administrative procedures of the life insurer with respect to issuance, transfer and redemption procedures for flexible premium variable life insurance policies funded by the separate account including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the policy, provided, however, that any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected policyholder and to all other holders of policies of the same class or series funded by the separate account, and, further provided that any such action shall be disclosed in the form required to be filed by the separate account with the Commission pursuant to paragraph (b)(3)(ii) of this Rule.

(14) Section 27 to the following extent:

(i) Sections 27(a)(1), 27(h)(1), and 27(h)(4) to the extent that the sales load, as defined in paragraph (c)(4), charged during the policy periods equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the policy based on the 1958 Commissioners Standard Ordinary Mortality Table on any flexible premium variable life insurance policy which is funded by the separate account shall not exceed 9 per centum of the sum of the guideline annual premiums that would be paid thereon during such policy periods: Provided, that the sales load, as defined in paragraph (c)(4), charged during any policy period in which the payments exceed the guideline annual premium shall not exceed the lesser of 9 per centum of the guideline single premium payable in such policy period, or the sum of the sales load charged during such policy period assuming the payment of exactly the guideline annual premium and 9 per centum of the excess of the payments made during such policy period over the guideline annual premium;

(ii) Sections 27(a)(3) and 27(h)(3), provided that the ratio with respect to each payment treated under paragraph (d)(1) of this Rule as made for the guideline annual premium and for amounts in excess of the guideline annual premium, respectively, of

(1) the amount by which the sales load charged during the policy period is increased by reason of the making of a payment, to

(2) The amount of such payment shall not exceed such ratio for any prior corresponding payment, unless an increase in any such ratio is caused by the grading of cash surrender values into reserves, or reductions in the annual cost of insurance.

(iii) Sections 27(c)(2), 26(a)(1) and 26(a)(2) provided that the life insurer complies, to the extent applicable, with all other provisions of Section 26 as if it were a trustee, depositor or custodian for the separate account, and:

(A) Files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000;

(B) Is examined from time to time by the insurance regulatory authority of such state, territory of District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations; and

(C) Limits the fees for administrative services to amounts that are reasonable in relation to services rendered and expenses incurred. The Commission shall retain jurisdiction regarding the determination of such fees; and

Provided further, that such life insurer may hold securities and similar property in which the funds of the separate account are invested in book entry form, subject to the provisions of Section 17(f) and Rule 17f–4, where applicable;

(iv) Section 27(c)(2) and 26(a), to the extent that charges under the policies may be imposed for administrative expense, taxes, sales and distribution expense, and similar expenses, provided that charges for administrative services are reasonable in relation to services rendered and expenses incurred;

(v) Section 27(c)(1), Section 27(d), and Section 2(a)(32), to the extent that

(A) Such sections require that the flexible premium variable life insurance policy be redeemable or provide for a refund in cash, provided that such policy provides for election by the policyholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the policy is offered, and further provided that unless required by the insurance law or regulation of the jurisdiction in which the policy is offered or unless elected by the policyholder, such policy shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an additional interest or similar charge;

(B) Sales loads may be charged upon a complete or partial surrender or withdrawal.

Notwithstanding the provisions of paragraph (b)(14)(v)(A), the policy may provide that, if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing date, the cash surrender value shall be applied to purchase a non-forfeiture option specified by the insurer in such policy;

(vi) Section 27(d), provided that the flexible premium variable life insurance policy gives the holder thereof the right to:

(A) Surrender the policy at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his policy which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, depending upon the period over which such policy has been retained by the policyholder, an amount which is a refund of any excess paid for sales loading prior to or in connection with the surrender. The amount of sales loading to be refunded shall be equal to that part of the sales loading in excess of the sum of: (1) The lesser of 30 per centum of the guideline annual premium or 50 per centum of the actual payments made during the first policy period, plus (2) the lesser of 10 per centum of the guideline annual premium or 17 per centum of the actual payments made during the second policy period, plus (3) 9 per centum of the payments made during the first or the second policy period after such payments exceed the guideline annual premium.

(B) Convert the policy at any time during the first 24 months after issuance so long as the policy is in force to a life insurance policy on the life of the insured pursuant to a plan of insurance (other than a plan involving a flexible premium variable life insurance policy as defined in paragraph (c)(1) of this Rule or a variable life insurance contract as defined in paragraph (c)(1) of Rule 6e–2) specified in the policy issued by the life insurer, or by a life insurance company affiliated with such insurer, which provides for either the same amount payable by reason of the death of the insured or the same net amount at risk as the flexible premium variable life insurance policy at the time of conversion and premiums which are based on the same issue age and risk classification of the insured as the flexible premium variable life insurance policy, which conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments and cash values under the original policy and the new policy, provided that the method of computing such adjustment shall be filed with the Commission as an exhibit to the form required pursuant to paragraph (b)(3)(ii) of this Rule;

(vii) A depositor or principal underwriter for a flexible premium variable life insurance policy sold subject to Section 27(d) or Section 27(f) of the Act, or both, shall be exempt from the requirements of Rule 27d–1 if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under Sections 27(d) and 27(f) of the Act to refund charges and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d–2;

(viii) Section 27(e) and Rule 27e–1 thereunder to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(14)(vi)(A) of this Rule, are required to provide a notice of right of withdrawal and refund to holders of flexible premium variable life insurance policies, if the life insurer or a duly authorized agent provides a notice of withdrawal and refund rights to the holder of any flexible premium variable life insurance policy under which a refund may be available, provided that such notice shall be sent by first class mail or personal delivery to the policyholder:

(A) At issuance of the flexible premium variable life insurance policy, which notice may be sent together with the issued policy and an illustration, in a form appropriate for inclusion in the prospectus for the flexible premium variable life insurance policy, of guideline annual premiums, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) Within thirty days after the first and second anniversaries of the policy, or within thirty days after a specified date in the first and second policy years, provided, however, that the right of withdrawal and refund provided by paragraph (b)(14)(vi)(A) of this Rule shall not expire until not less than 15 days after the mailing or personal delivery of the last notice referred to in this paragraph (b)(14)(viii)(B).

(ix) Section 27(f) and Rule 27f–1, provided that:

(A) The policy holder may elect to return the policy within 10 days after receipt of the issued policy by the policyholder, or within 10 days after mailing or personal delivery of the notice of the right of withdrawal referred to in paragraph (b)(14)(ix)(C), whichever is later, and receive a refund equal to the sum of (1) the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy, and (2) the value of the amounts allocated to any separate accounts under the policy on the date the returned policy is received by the insurer or its agent, provided, however, that if state law or the policy so require, the redeeming policyholder shall receive a refund of all payments made for such policy;

(B) A refund in accordance with paragraph (b)(14)(ix)(A) to redeeming policyholders will not in any way affect the interests in the separate account or the benefits of other flexible premium variable life insurance policyholders;

(C) Notice of such withdrawal right and a statement of charges is sent by first class mail or personal delivery to the policyholder. Such notice and statement shall inform the policyholder of the right of withdrawal as set forth in paragraph (b)(14)(ix)(A) and shall summarize the deductions for sales load and for administrative expenses as specified in the prospectus for the flexible premium variable life insurance policy. Such notice and statement may be accompanied by the flexible premium variable life insurance policy, and an illustration, in a form appropriate for inclusion in the prospectus for the flexible premium variable life insurance policy, of guideline annual premiums, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The policyholder, in conjunction with the notice of withdrawal right referred to in paragraph (b)(14)(ix)(C) is provided with a form of request for refund of the amount computed in accordance with paragraph (b)(14)(ix)(A), which form shall set forth

(1) Instructions as to the manner in which a refund may be obtained including the address to which the request form should be mailed; and

(2) Spaces necessary to indicate the date of such request, the policy number and the signature of the policyholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the policyholder the amount computed in accordance with paragraph (b)(14)(ix)(A);

(x) Solely for purposes of paragraphs (b)(14)(vi) and (b)(14)(ix) of this Rule, the postmark date on the envelope containing the flexible premium variable life insurance policy shall determine whether such policy has been submitted for surrender or conversion within the designated period.

(15) Section 32(a)(2), provided that:

(i) The independent public accountant is selected before the effective date of the registration statement under the Securities Act of 1933, as amended, for

flexible premium variable life insurance policies which are funded by the separate account, and the identity of such accountant is disclosed in such registration statement, and

(ii) The selection of such accountant is submitted for ratification or rejection to flexible premium variable life insurance policyholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown.

(16) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies:

(i) The eligibility restrictions of Section 9(a) of the Act shall not be applicable to those persons who are officers, directors and employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described above;

(ii) The life insurer shall be ineligible pursuant to paragraph (3) of Section 9(a) of the Act to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(16) only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of Section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from policyholders of the separate account if such instructions would require such shares to be voted:

(A) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A); or

(B) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C);

(iv) Any action taken in accordance with paragraph (b)(16)(iii) (A) or (B) and the reasons therefor shall be disclosed in the next report to policyholders made pursuant to Section 30(d) and Rule 30d-2 thereunder.

(c) When used in this Rule:

(1) "Flexible premium variable life insurance policy" means a policy of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which provides for:

(i) The payment of one or more premiums which are not fixed by the life insurer as to both timing and amount;

(ii) A death benefit the amount or duration of which may vary to reflect the investment experience of the separate account;

(iii) A cash surrender value which varies to reflect the investment experience of the separate account; and

(iv) Assumption of mortality and expense risks thereunder by the life insurer for which a charge may be assessed. Such charge shall be disclosed in the prospectus.

Provided, however, that "flexible premium variable life insurance policy" shall not include that portion of any policy which is treated under state law as providing any annuity benefits other than as a settlement option.

(2) "Incidental insurance benefits" means insurance benefits provided pursuant to the flexible premium variable life insurance policy, other than any guaranteed and variable death benefit, which do not have discrete cash values that may vary in accordance with the investment performance of the separate account, including, but not limited to, accidental death dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) "Guaranteed death benefit" is the amount, if any, guaranteed by the life insurer to be paid pursuant to a flexible premium variable life insurance policy in the event of the death of the insured without regard to the investment performance of the separate account funding the flexible premium variable life insurance policy, if there are no outstanding loans, partial withdrawals or partial surrenders, but does not include any incidental insurance benefits.

(4) "Sales load" charged during a policy period is the excess of the payments made during such period over the sum of the following:

(i) The amount of the increase in the cash surrender value for such period not attributable to net investment earnings for such period;

(ii) The cost of insurance for such period based on the 1958 Commissioners Standard Ordinary Mortality Table and net interest at an annual effective rate of 4 percent;

(iii) If the policy provides for a guaranteed death benefit, a reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than the guaranteed death benefit;

(iv) Any administrative expenses or fees which are reasonable and in amounts not exceeding anticipated administrative expenses and fees not properly chargeable to sales or promotional activities;

(v) Any deduction approximately equal to state premium taxes;

(vi) Any additional charges assessed if the insured does not meet standard underwriting requirements;

(vii) Any additional charge assessed specifically for any incidental insurance benefits;

(viii) Any additional charge assessed specifically for any mortality or administrative expense risk or interest rate guarantees, to the extent that such charges are not reflected in net investment earnings;

(ix) Any additional charge, in the nature of an interest or service charge or administrative fee, assessed when payments are made more frequently than annually;

(x) Any amounts paid out of the cash surrender value to the policyholder upon a complete or partial surrender or withhdawal or to the beneficiary upon the death of the insured which are not attributable to net investment earnings for such period;

(xi) For a participating flexible premium variable life insurance policy, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the policy assuming a net investment earnings rate for the separate account which funds such policy of 4 percent. The deduction may be determined pursuant to either of the following methods, provided that the same method must be applied with respect to each policy period:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the policy periods described in paragraph (b)(14)(i) of this Rule, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for such policy and the assumption that the guideline annual premium will be paid in each such policy period, multiplied by

the fraction of the policy year represented by the policy period; or

(B) That portion of the dividend to be paid for the policy year which does not depend on the making of payments in addition to those made during such period; and

(xii) Any other fees or charges that are not properly chargeable to sales or promotional activity, to the extent that such fees or charges are reasonable in relation to expenses incurred and are not reflected in net investment earnings.

(5) "Policy period" means the period from a policy anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the policy.

(6) "Variable death benefit" is the amount of death benefit, other than incidental insurance benefits, payable under a flexible premium variable life insurance policy which varies to reflect the investment performance of the separate account, and which would be payable in the absence of any guaranteed death benefit.

(7) "Payment" as used in paragraph (b)(14)(i), (b)(14)(ii), and (b)(14)(vi)(A) of this Rule and in sections 27(a)(e) and 27(h)(2) solely with respect to flexible premium variable life insurance policies, means for a policy period the gross premium payments made less any portion of such gross premium payments charged prior to the allocation of net premiums to the separate account for the items specified in paragraphs (c)(4)(vi), (c)(4)(vii), and (c)(4)(ix) of this Rule. "Payment," as used in any other section of the Rule, means the gross premiums paid or payable for the flexible premium variable life insurance policy.

(8)(A) "Guideline annual premium" means the level annual amount that would be payable over the longest period permitted under the policy for the future benefits under the policy, if, subject to the provisions of paragraph (c)(8)(B):

(i) The premiums were fixed by the insurer as to both timing and amount, and

(ii) The premiums were based on the 1958 Commissioners Standard Ordinary Mortality Table, net investment earnings at an annual effective rate of 1 percent, the sales load under the policy, and the charges associated with the policy specified in paragraphs (c)(4)(iii), (c)(4)(iv), (c)(4)(v), (c)(4)(vi), (c)(4)(vii), (c)(4)(viii), (c)(4)(ix), (c)(4)(xi) and (c)(4)(xii) if this Rule.

(B) In computing the guideline annual premium:

(i) The excess of the amount payable by reason of the death of the insured (determined without regard to any incidential insurance benefits) over the cash value of the policy shall be deemed to be not greater than such excess at the time the policy was issued.

(ii) The maturity date shall be the lastest maturity date permitted under the policy but not less than 20 years after the date of issue or (if earlier) age 95, and

(iii) The amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) at any time under the policy.

(9) "Guideline single premium" means the single amount payable at a specified time which would provide the future benefits under the policy until the maturity date specified in paragraph (c)(8)(B)(ii) and which otherwise is computed on the same basis as the guideline annual premium.

(10) "Cash value" means the amount that would be available in cash upon voluntary termination of a policy by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding policy loan.

(11) "Cash surrender value" means the amount available in cash upon voluntary termination of a policy by its owner before it becomes payable by death or maturity, after any charges assessed in connection with such termination have been deducted and before deduction of any outstanding policy loan.

(12) "Net investment earnings" means investment earnings in the separate account after any asset charges, including but not limited to such charges for income tax, investment expense, investment advice, interest rate guarantees, and expense and mortality risk, but not including asset charges properly chargeable to sales or promotional activity.

(d) The following computational rules shall be used in applying this Rule:

(1) Payments made during each policy period shall be deemed to be paid first, for the guideline annual premium, and second, for amounts in excess of the guideline annual premium.

(2) Paragraphs (b)(14)(i), (b)(14)(ii), and (b)(14(vi)(A) of this Rule shall be deemed to be satisfied with respect to any flexible premium variable life insurance policy under which sales load may be deducted other than from gross premiums prior to the allocation of net premiums to the separate account (the "actual policy") if during each policy period through the maturity date specified in paragraph (c)(8)(B)(ii) of this Rule, the cash surrender value, the death benefit, and any endowment benefit provided under such policy is not less than the cash surrender value (including any amounts that would be refunded under paragraph (b)(14)(vi)(A) of this Rule), death benefit, and endowment benefit, respectively, that would be provided under a flexible premium variable life insurance policy (the "test policy") that is identical to the actual policy except that sales load may be deducted only from gross premiums prior to the allocation of net premiums to the separate account in any manner satisfying the provisions of the Act and this Rule, assuming that:

(A) Premiums for both the actual policy and the test policy are paid in each of the following alternative amounts:

(i) Level annual premiums equal to the guideline annual premium for the actual policy, and

(ii) A single premium paid at issue equal to the guideline single premium at issue for the actual policy,

(B) Net investment earnings are earned at an annual effective rate of 4 percent, and

(C) No partial withdrawals or surrenders are effected under the actual and test policies.

(e) The term "insurance company," as used in the Act and the rules and regulations thereunder, shall have the meaning set forth in Section 2(a)(17) of the Act, provided that the phrase "the writing of insurance" as used therein shall include the writing of flexible premium variable life insurance policies as defined in paragraph (c)(1) of this Rule or of variable life insurance contracts as defined in paragraph (c)(1) of Rule 6e-2. A company that is an insurance company within the meaning of this paragraph (e) shall be exempt from Section 2(a)(17) of the Act.

VI. Text of Proposed Rule under Section 6(c)

A separate account which meets the requirements of paragraph (a) of Rule 6e– and registered as an investment company under section 8(a) of the Act, and the investment advisor, principal underwriter and depositor of such separate account, shall be exempt from the provisions of the act specificed in paragraph (b) of Rule 6e–, except for sections 7 and 8(a) of the Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e—.

September 15, 1983 Supplement to Petition

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Amendment to Petition for Issuance of Rules and Rulemaking Proceeding Therefore

This amendment to the petition for issuance of rules and for a rulemaking proceeding therefore is submitted by the American Council of Life Insurance, and supplements the petition filed June 29, 1983 (hereinafter referred to as "the Petition") with respect to flexible premium variable life insurance separate accounts. This amendment discusses the proposed treatment of sales loads charged upon adjustments in insurance benefits provided under flexible premium variable life insurance policies, which was not addressed in the Petition. This amendment reflects the joint efforts of the Council and the law firm of Sutherland, Asbill & Brennan.

The interest of the petitioner, the statutory authority for the Petition and the issuance of the proposed rule, and the background to and general characteristics of flexible premium variable life insurance are discussed in the Petition, which discussion is incorporated herein by reference.

I. Adjustments in Insurance Benefits

As more fully described at pages 8–22 of the Petition, flexible premium variable life insurance is a new class of insurance policy offering a unique combination of insurance and investment elements. Like scheduled premium variable life insurance—the first life insurance product subjected to the Investment Company Act of 1940 (" the 1940 Act")—flexible premium variable life insurance will provide a death benefit and cash value that may vary in certain respects to reflect the investment performance of one or more insurance company separate accounts. Like universal life insurance issued out of insurance company general accounts, flexible premium variable life insurance will permit unscheduled premium payments and adjustment of the face amount of insurance or incidental insurance benefits by the policyholder.

The ability for the policyholder independently to adjust the face amount of insurance or insurance riders under the policy is unprecedented in a product registered under the 1940 Act. While existing scheduled premium variable life insurance provides an immediate insurance benefit to purchasers, it generally does not permit adjustment of that benefit by the policy holder.[1] Rather, the design of such policy inherently reflects a structured relationship between premiums, cash value, and insurance benefits. That is, the policy prescribes scheduled premiums and predetermined tabular cash values resulting from those premiums, which are calculated to provide a specified face amount of insurance. (The amount of insurance additions resulting from earnings in excess of the assumed investment rate is also prescribed.) Existing variable life insurance does not permit the policyholder readily to adjust the face amount of the policy, because such increased benefits would exceed the benefit preordained by the premiums required and cash values accumulated to date. Policyholders may obtain such *additional* insurance protection only by purchasing a second policy. A *reduction* in the face amount of insurance can be accomplished (if at all) only by a partial surrender of the policy, which also involves a pro rata reduction in the cash value.

In contrast, flexible premium variable life insurance generally will allow policyholders to increase or decrease their insurance benefits at their option. Policyholders usually will be allowed to adjust the "face amount of insurance" under the policy.[2] Policyholders may also be able to increase, decrease, or add incidential insurance benefits. Decreases typically will be permitted subject to a prescribed minimum face or benefit amount. Increases or additions usually will be permitted subject only to evidence of current insurability. Because of the flexible premium structure characteristic of this new product, an adjustment in insurance benefits will have no necessary, immediate consequence for premiums or cash values under the policy. To the extent that an adjustment in insurance benefits alters the net amount at risk or (if a new incidental insurance benefit rider is added) adds a risk, the periodic cost of insurance or incidental insurance benefit charge to the policyholder will increase or decrease. In addition, some companies may choose to require a minimum premium upon an increase or addition.

This feature of flexible premium variable life insurance will be of significant benefit to policyholders. Each policyholder can purchase a single policy, obtain an immediate insurance benefit in a suitable amount and type, and thereafter independently adapt that level and type of insurance benefit as economic conditions and personal circumstances change. Policyholders usually will realize greater convenience and cost savings by avoiding the need to purchase and maintain a new policy each time their insurance needs change. For example, the administrative charge under a single policy with occasional adjustments in benefits likely will be less than the administrative charges under two or more separate policies. It may be financially feasible for some companies to offer lower sales loads or even lower cost of insurance charges under a single, adjusted policy than under multiple separate policies. Moreover, the ability to adjust benefits will allow companies to meet more precisely their customers' insurance needs within the companies' cost constraints. For example, insurers may permit relatively small increases in face amount under an existing policy in circumstances where a separate policy would not be written because of cost considerations. Likewise, policyholders probably will more readily decrease their insurance benefits in appropriate circumstances if such an adjustment is easily accomplished. A single, adjusted policy in lieu of two or more separate policies simplifies the policyholder's dealings with the insurer: he need write only one premium check or complete only one beneficiary designation form, and policy loans or loan repayments need not be allocated among several policies. Policyholders may also realize greater flexibility in investment allocations among any options made available by the insurer. A single, adjusted policy with a single cash value is less likely to be subject to allocation restrictions than would two or more separate policies with separate smaller cash values. The policyholder's understanding and supervision of his policy should also be improved.

II. Basis for Exemption From the 1940 Act

It is respectfully proposed that the Commission, pursuant to its authority under Sections 6(c), 6(e) and 37(a) of the 1940 Act, include, in a rule exempting

[1] Incidental insurance benefits provided under a scheduled premium variable life insurance policy may be adjustable by the policyholder (depending on individual policy design), but charges in connection with such adjustments are not regulated by Rule 6e–2 or the 1940 Act.

[2] If a policyholder elects an Option I or "level" death benefit under a flexible premium variable life insurance policy (described at pages 13–14 and in Appendix B of the Petition), the face amount of insurance generally is the death benefit payable while the policy remains in force. Under an Option II or "increasing" death benefit election, the face amount of insurance is the level net amount at risk under the policy, to which cash value is added to determine the amount of current death benefit.

flexable premium variable life insurance separate accounts from certain provisions of the 1940 Act, the relief described herein with respect to sales loads charged in connection with or after an adjustment of insurance benefits. The basis for such exemption is stated at page 23–31 of the Petition and in this Amendment.

III. Analysis of the Proposed Exemption From the 1940 Act

As was the case in Rule 6e–2, the accommodation of the investor protections contained in Section 27 of the 1940 Act with the features of life insurance policies subject to that statute is among the most necessary exemptions proposed in the Petition and this Amendment. Section 27 was enacted to regulate a specific security—contractual plans—within the context of the practices and characteristics of a specific industry—the mutual fund industry. The capability to adjust insurance benefits is, of course, totally foreign to mutual funds. That capability arises solely from the insurance features of flexible premium variable life insurance.

The relatively high front-end sales and distribution costs characteristic of life insurance generally will be incurred with respect to increases in the face amount of insurance, or increases in or additions of incidental insurance benefits. (The significant economies of adjustments typically will lie in the ongoing administration of one policy instead of two, not in the implementation of an increase or addition.) In particular, it is expected that an increase or addition usually will involve additional sales effort on the part of the sale representative, including periodic contacts with policyholders to remind them of the availability of increases and additions, and examination and development of various alternative increases or additions with interested customers. This effort will approach, and in some cases may be equivalent to, the sales effort required for a new sale of a flexible premium variable life insurance policy. Accordingly, companies generally will pay sales commissions on increases in our additions of insurance benefits at or near the accustomed rate for new sales, in order to appropriately encourage such adjustments. If the commission on increases or additions does not approximate the commission on new sales, sales personnel could approach existing policyholders and suggest the purchase of a second policy where an increase or addition would be suitable, thereby earning the higher commission. The advantages to policyholders derived from their ability to adjust insurance benefits thus would effectively be compromised. If the design of flexible premium variable life insurance is to be implemented in a manner feasible for insurance companies, the economics of life insurance sales practices dictate that, in most cases, commissions will be paid on increases and additions approximately equal to commissions on new sales. In contrast, decreases in face amount (which are in the nature of partial surrenders) or in incidental insurance benefits likely will not involve sales expense. In particular, sales commissions generally will not be paid.

In circumstances analogous to increases in or additions of insurance benefits, additional sales loads may be charged under other products regulated by the 1940 Act. In the case of scheduled premium variable life insurance, Section 27 and Rule 6e–2 permit assessment of additional sales load upon the acquisition of additional insurance benefits through the only existing means—the purchase of a second policy.

The relief from Section 27 proposed in the Petition did not address, and thus made no provision for, sales loads upon adjustments in face amount or incidental insurance benefits. Such relief is, however, necessary and justified. Sections 27(a)(1), 27(a)(3), 27(h)(1), 27(h)(3), and 27(h)(4) of the 1940 Act (and the exemptions from those sections proposed in the Petition) can be read to require the continued charging of sales loads under a flexible premium variable life insurance policy according to the renewal year schedule established at issue, without additional loading at the time of the increase or addition to compensate for the additional sales and distribution expense incurred, simply because the adjustment of the face amount of insurance or incidental insurance benefits[3] does not formally require the purchase of a new policy. This stricture on sales load would result solely from the innovative insurance design of this new policy, and in all likelihood would cause many insurers not to provide policyholders the right to adjust insurance benefits. Such a result is not required to preserve the investor protections of the 1940 Act, as evidenced by additional sales loads permitted upon corresponding transactions under other types of products.

Accordingly, if flexible premium variable life insurance is to be a viable product for the industry, relief from Section 27 consistent with the purposes and policies of the 1940 Act should be promulgated to permit companies to receive sales loads upon adjustments in insurance benefits, in recognition of the sales and distribution costs incurred in such transactions. Such relief should also satisfy the additional criteria noted in the Petition: (1) it should facilitate prospective demonstrations of compliance, (2) it should not limit the diversity of sales load forms (*i.e.*, a front-end load, a back-end load, a charge against cash value, or a combination thereof) suitable for this product, but instead should foreclose any potential abuses possible under the various forms, and (3) it should recognize the inherent difficulty of applying the 1940 Act regulatory structure to these circumstances.

The proposed rule accommodates these considerations by providing that a flexible premium variable life insurance policy imposing a sales load in connection with or after an increase in the face amount of insurance or an increase in or addition of incidental insurance benefits requested by the policyholder is exempt from Sections 27(a)(1), 27(a)(3), 27(d), 27(h)(1), 27(h)(3), and 27(h)(4) of the 1940 Act if the policy satisfies *both* an "economic value" test *and* a "cumulative sales load" test. This relief pertains only to adjustments in insurance protection requested by the policyholder after issuance of the policy. A policyholder could request such an adjustment in one of two ways: by affirmatively applying for an adjustment or, if the policy by its terms schedules adjustments which the policyholder has the option to decline,[4] by not exercising

[3] As explained at page 46, footnote 29, and at pages 75–76 of the Petition, and in contrast to Rule 6e–2, the proposed rule treats incidental insurance benefits as a part of the policy for sales load purposes, unless premiums for the rider are separately stated and required. In particular, the proposed rule generally cannot exclude amounts attributable to incidental riders from the definitions of "payment" and, indirectly, of "sales load." (Any specific benefit charges for such riders are not treated as sales load and thus are unregulated, as in Rule 6e–2.) That sales load is, however, tested against a "guideline annual premium" which also takes account of incidental insurance benefits. Thus, to the extent that any additional charges on an increase or addition of an incidental insurance benefit will be treated as sales load, relief necessary to allow such charges (with reference to an appropriately adjusted guideline annual premium) is required.

[4] For example, a policy might provide that, subject to the policyholder's option to request that the adjustment not be made, the face amount of insurance would be adjusted in a fixed manner (*e.g.*, it would double on the tenth policy anniversary) or in a determinable manner (*e.g.*, it would be annually adjusted to reflect changes in the Consumer Price Index).

such an option and thus implicitly requesting that the adjustment be made. In contrast, the proposed relief would be inapplicable to adjustments after issuance not requested by the policyholder, such as increases in the death benefit resulting from positive investment performance or automatic adjustments scheduled in the policy which the policyholder may not decline.

The proposed relief is also limited to adjustments in the insurance protection provided by the insurer to the policyholder. Adjustments in insurance benefits within the scope of the proposed rule thus include:

1. An increase in the face amount of insurance provided under an Option I death benefit election;

2. An increase in the face amount of insurance (that is, the level net amount at risk) provided under an Option II death benefit election;

3. A switch from Option I to Option II. The effect of this adjustment generally is to maintain the same net amount at risk at the time of the change in election but to increase, relative to the prior option, the future net amount at risk for the insurance company;

4. An increase in the amount of an incidental insurance benefit; and

5. An addition of an incidental insurance benefit. If the policyholder switches from Option II to Option I, maintaining the same net amount at risk, there is no increase in insurance benefits even though there is a change in the face amount of insurance.[5] The relief requested would not apply in this case.

The "economic value test" corresponds to the test for sales loads other than front-end loads proposed in the Petition. This test is satisfied if, during each policy period through maturity, the cash surrender value, death benefit, and any incidental insurance or endowment benefit under the actual policy (taking account of increases or additions) are not less than, respectively, the aggregate cash surrender values, death benefits, incidental insurance benefits and endowment benefits of a "base test policy" and an "incremental test policy."[6] The base test policy is identical to the actual policy in all respects except that the increase or addition is assumed not to occur. The "incremental test policy" is a flexible premium variable life insurance policy issued at the time of the increase or addition which provides only the incremental change in the insurance benefits and assesses sales load (without requiring any sales load to be refundable upon surrender in the first 24 months) in any manner permitted by the 1940 Act and the proposed rule.

The "cumulative sales load test" is satisfied if, during each policy period through maturity, the cumulative sales load charged to date under the actual policy does not exceed the sum of the cumulative sales loads under the base test and incremental test policies.

In applying these tests, the proposed rule specifies certain actuarial assumptions. Consistent with the approach to sales load regulation generally taken in the proposal, payments of both guidelines annual premiums and guideline single premiums are assumed and tested. For example, payments for the actual policy are assumed to be the guideline annual premium adjusted at the time of increase or addition. Payments for the base test policy are assumed to be the guideline annual premium at issue, while payments equal to the difference in the guideline annual premium for the actual policy before and after the increase or addition are deemed to be made under the incremental test policy. Corresponding assumptions as to the alternative payment of the guideline single premium are also required.[7] Net investment earnings at an effective annual rate of 4 percent are assumed. Finally, withdrawals or surrenders are assumed not to occur prior to the duration being tested.

The principle underlying the proposal is that, upon or after an increase or addition, the insurance company should be permitted to charge a sales load equivalent to the load it could have charged had the policyholder instead been required to purchase a second policy to obtain the enhanced insurance benefit. Accordingly, the proposal serves the purposes and policies of the 1940 Act by limiting the sales load in these unique circumstances to the amount permitted in more familiar cases. By imposing the requirements of Section 27 indirectly, however, the proposal avoids the inapt direct application of these limitations.[8] Insurers are not penalized for extending to policyholders the right to adjust the face amount or riders, or for adopting sales loads on increases or additions other than front-end loads.[9] By permitting additional sales loads reflecting increases in face amount, or increases in or additions of incidental benefits, the proposal also allows companies to structure sales loads to prevent policyholder from initially buying a small policy and then requesting a substantial increase in the face amount of insurance or in incidental insurance benefits, thereby unfairly requiring other policyholders or the insurer to bear a significant share of the sales expense attributable to such a policyholder. The generality of this approach allows a diversity of sales load structures. By reason of the specified actuarial assumptions, prospective demonstrations of compliance can be mechanically produced.

Finally, it is believed that the economic value and cumulative sales load tests together test representative payment patterns and otherwise police abuses contrary to the purposes and policies of the 1940 Act. In particular, if administrative charges or certain other charges are lower for a single, adjusted policy than for the separate policies, the economic value test alone would allow

[5] The described effect of both switches in death benefit options on the insurance benefits provided to the policyholder assumes a continuing positive accumulation of cash value under the policy.

[6] In order to clarify a possible ambiguity, the statement of the economic value test in the rule provisions proposed in this amendment differs slightly from the statement of the economic value test in the rule provisions proposed in the Petition. It would seem appropriate to conform paragraph (d)(2) proposed in the Petition to paragraph (d)(3)(A)(i) proposed in this amendment.

[7] In addition, the payments assumed for the incremental test policy are specified to be the guideline annual and guideline single premiums for such policy, for purposes of determining its compliance with the 1940 Act and the proposed rule. (Compliance with these authorities is of course a prerequisite to the use of a given incremental test policy in the proposed tests.) This approach avoids certain technical complications which could arise if the guideline premiums for the incremental test policy were computed strictly with reference to the definitions of "guideline annual premium" and "guideline single premium" contained in paragraphs (c)(8) and (c)(9) of the proposed rule. The amounts specified above generally are less than or equal to the guideline premiums that would be independently computed for the incremental test policy under the principles of paragraphs (c)(8) and (c)(9). In the limited circumstance where the policyholder switches from Option I to Option II, the specified guideline premiums for the incremental test policy would, for years immediately after such switch, exceed the corresponding independently computed guideline premiums. Over the life of the policy, however, the independently computed guideline premiums would annually increase and would eventually exceed the corresponding specified guideline premiums. The sum of the specified guideline premiums would be less than or equal to the sum of the independently computed guideline premiums.

[8] A consequence of this approach is that, for example, the 20-year period for complying with the 9 percent sales load limit and the rule that sales loads as a percentage of payments may not increase over time are not *directly* applied to the policy upon an increase. Instead, the policy is tested *to maturity* against hypothetical policies which do comply with these and all other provisions of the Act and the proposed rule.

[9] As explained at pages 57–66 of the Petition, such loads are beneficial to policyholders and should be permitted.

the amount of that reduction to be charged as sales load: for example, the cash value of the various policies would comply with the test because an amount charged as sales load under the actual policy would be matched by an assumed full administrative charge under the incremental test policy. Such a result is simply a methematical quirk of the economic value test.[10] By examining sales loads rather than cash values, the cumulative sales load test precludes this unintended, and possibly abusive, result.[11]

Illustrations of the sales loads permitted by the proposed rule and sample demonstrations of the type contemplated are attached as Appendix A.[12] An explanation in mathematical notation of the computations discussed in the Petition and in this document is attached as Appendix B.[12]

As was the case with the economic value test proposed in the Petition, this economic value and cumulative sales load approach to the regulation of sales loads on increases or additions does not preclude the possiblilty that such sales loads would exceed 9 percent payments over a specified period. To keep the policy in force, additional premiums equal to the guideline single or annual premium after adjustment (or actuarially equivalent to such amount if payments are not made upon the adjustment or at regular annual intervals) will be necessary, under the actuarial assumptions specified above. If such premiums are paid, the sales load charged on the adjusted policies will ultimately average 9 percent of payments. The policyholder may, however, let the policy as adjusted lapse, either by surrendering the policy or by paying premiums less than the guideline amount allowing the cash value to be depleted by authorized policy charges.

Nonetheless, the proposal accommodates in a fair manner the principles of the 1940 Act with the life insurance features of this product. Flexible premium variable life insurance will be designed to provide insurance protection for the whole of life and to set the level of charges so as to cover expenses expected to be incurred or amortized over a protracted period of time. In other words, each time an issuer sells a policy of a certain amount, it will anticipate receiving a stream of income for a period of years, arising from charges for the cost of insurance, for administration, and for mortality and expenses risks and other contingencies the policy and paying death claims during that period. If more insurance protection is added, additional charges will be required for the increase or addition. The remaining stream of income from the original issue does not provide for increased coverage.

In this regard, a sales load on increases or additions will roughly balance the interest of policyholders with the without increases or additions. The economic effect of having no additional sales charge on increases or additions can be viewed as permitting a policyholder to purchase coverage without having paid the expenses incurred in that sale. In the absence of an additional sales charge on increases or additions, the unpaid expenses ultimately would have to be borne by policyholders without increases or additions. (Such a result, by possibly diluting the interests of policyholders without increases or additions, could be viewed as inconsistent with the principles underlying Section 22(d) of the Act.) The sales charge on increases thus operates as a mechanism to shift, from policyholders without adjustments to policyholders with adjustments, expenses incurred in the sale of the policy with increases or additions.

The proposal also permits additional sales load to be deducted from cash value, without regard to whether the increase or addition is accompanied by the payment of additional premium. This practice is consistent with the flexible character of flexible premium variable life insurance. If premium were required upon an increase or addition, a policyholder could simply borrow or withdraw cash value from the policy, and endorse the check back to the company as "new" premium. This practice would not be inconsistent with the 1940 Act; for example, funds may be used to purchase a scheduled premium variable life insurance policy subject to a sales load, and then the same funds may be borrowed through a policy loan and again be subject to sales load when used to pay later premiums or to purchase another such policy providing additional insurance protection. The result should not differ simply because flexible premium variable life insurance permits the addition of insurance benefits without the purchase of a new policy, or may not require the policyholder to submit to the meaningless formalism of withdrawing cash value (and possibly incurring a back-end sales load) so that "new" premium may be paid upon an adjustment.

Upon an increase or addition, the proposal does not reimpose the "refund," "conversion," and "free look" requirements of the rule proposed in the Petition, and further assumes that Section 27(a)(2) of the Act is inapplicable as well. By limiting first-year sales loads, requiring a "free look" period after a policy is issued, and ensuring on early surrender either a refund of certain sales loads or the availability of an alternative policy without evidence of current insurability, these requirements protect a policyholder who finds a newly purchased product unsuitable during this initial experience with it. An increase in or addition of insurance benefits, however, does not involve the purchase of an unfamiliar product. It instead involves an adjustment to an existing policy with which the policyholder is presumably experienced and satisfied. In these circumstances, the various rules applicable in early years after issue need not be directly reapplied after an increase in face amount. The requirements of Section 27(a)(2) and the refund rule are made indirectly applicable through the test policies, under the proposed economic value and cumulative sales load tests. In particular, the cumulative sales load test in effect limits the sales load on an icrease or addition to the sales load chargeable under a new policy without triggering the potential application of the refund rule. (The possibility of an increase or addition does not of course relieve a policy from compliance with these various provisions at issue.)

Finally, the proposal does not require the refund of sales loads upon a decrease in insurance benefits under a flexible premium variable life insurance policy. A decrease is analogous to a partial surrender of the policy. In the case of a surrender, the purposes and policies of the 1940 Act require refund of excess sales loads only during the first two policy years. For the reasons discussed above, such a refund right should not be indefinitely extended to any decrease. Moreover, if refunds of sales loads were required on decreases, policyholders contemplating a surrender could instead decrease the insurance benefits, receive a refund of sales load, and then surrender the policy. Accordingly, a refund rule for decreases

[10] This quirk cannot occur under the economic value test proposed in the Petition for sales loads at issue other than front-end loads, because that test does not involve two different test policies; the administrative charges in the actual and test policies are assumed to be identical.

[11] In practice, the cumulative sales load test will be as rigorous or more rigorous for front-end loaded policies than the economic value test, and the latter test could br dispensed with in such cases. In order to avoid the complication of imposing different tests for different sales load designs, however, the proposal subjects all policies to both tests.

[12] Appendix A and B not included in the Attachment B.

would allow policyholders to inequitably shift sales expense to other policyholders or the insurer.

IV. Text of Additional Paragraph for Proposed Rule Under Section 6(e)

It is proposed that the following paragraph (d)(3) be added to the rule proposed in the Petition:

(d)(3)(A) Solely with respect to increases in or additions of insurance benefits requested by a policyholder after issuance of a flexible premium variable life insurance policy, such policy shall be deemed to satisfy paragraphs (b)(14)(i), (b)(14)(ii), and (b)(14)(vi) of this Rule provided that during each policy period through the maturity date specified in paragraph (c)(8)(B)(ii) of this Rule:

(i) The cash surrender value, the death benefit, any incidental insurance benefit, and any endowment benefit provided under the actual policy are not less than the respective sums of the cash surrender values (including any amounts that would be refunded under paragraph (b)(14)(vi)(A) of this Rule), death benefits, incidental insurance benefits and endowment benefits that would be provided under the base test policy and the incremental test policy, and

(ii) The sum of the sales loads charged in such policy period and all preceding policy periods shall not exceed the sum of the corresponding sales loads under the base test policy and the incremental test policy.

(B) The following assumptions shall be used in applying paragraph (d)(3)(A):

(i) Premiums for the actual policy and the test policies are paid in each of the following alternative amounts:

(a) Level annual premiums for the base test policy equal to the guideline annual premium for such policy, commencing upon issuance; level annual premiums for the incremental test policy equal to the difference between the guideline annual premium for the actual policy after the increase in or addition of insurance benefits and before such increase or addition, commencing upon such increase or addition; and level annual premiums for the actual policy equal to the guideline annual premium for such policy, commencing upon issuance and addjusted for such increase or addition as of the date of such increase or addition; and

(b) A single premium at issue for the base test policy and for the actual policy in an amount equal to the guideline single premium for the actual policy at issue; and a single premium for the actual policy and the incremental test policy equal to the additional guideline single premium needed for the actual policy upon the increase in or addition of insurance benefits, as of the date of such increase or addition;

(ii) Net investment earnings are earned at an annual effective rate of four percent; and

(iii) No partial withdrawals or surrenders are effected under the actual and test policies.

(C) For purposes of this paragraph (d)(3):

(i) "Actual policy" shall mean the flexible premium variable life insurance policy issued to the policyholder, and adjusted for the increase in or addition of insurance benefits, as of the date of such increase or addition.

(ii) "Base test policy" shall mean the actual policy had the increase or addition not occurred.

(iii) "Incremental test policy" shall mean a flexible premium variable life insurance policy that is issued on the date of the increase or addition, provides insurance benefits identical to the incremental change in insurance benefits under the actual policy upon such increase or addition, and charges sales load in any manner, without requiring any sales load to be refundable under paragraph (b)(14)(vi)(A) of this Rule, satisfying the provisions of the Act and this Rule. For purposes of satisfying the provisions of the Act and this Rule, the amounts specified in paragraph (d)(3)(B)(1) (a) and (b) as paid for the incremental test policy shall be treated as the guideline annual premium and guideline single premium, respectively, for such policy.

[FR Doc. 83-31916 Filed 11-29-83; 8:45 am]
BILLING CODE 6010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 104, 141, 154, 159, 201, 204 and 260

[Docket No. RM83-66-000]

Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts, Form Nos. 1, 1-F, 2, and 2-A, and Related Regulations; Extension of Time for Comments

November 25, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 27, 1983, the Commission issued a Notice of Proposed Rulemaking involving revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts, Form Nos. 1, 1-F, 2, and 2-A, and Related Regulations (48 FR 43361, October 12, 1983). The comment period is being extended at the request of the Edison Electric Institute.

DATE: Comments must be submitted on or before December 27, 1983.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

On November 15, 1983, Edison Electric Institute (EEI) filed a motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued September 27, 1983, in the above-docketed proceeding. The motion states that additional time is required in order to allow EEI's member companies to analyze the significant revisions which are proposed in the Commission's rulemaking and to assess the impact the proposal will have on the utility industry.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including December 27, 1983.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32022 Filed 11-29-83; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Insured Status and Quarters of Coverage—Disability Insured Status

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: Pub. L. 98-21 (section 332) relaxes the disability insured status requirement for younger workers who become disabled again after termination of a previous period of disability which started before age 31. Under requirements in effect prior to April 20, 1983, the date of enactment of Pub. L. 98-21, many of these workers had not worked long enough to be insured again

for disability insurance benefits following a previous period of disability. We are updating our regulations on how we determine disability insured status in order to reflect the changes made by Pub. L. 98–21.

DATES: We will consider your comments if we receive them no later than January 30, 1984.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulation, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7415.

SUPPLEMENTARY INFORMATION: If you are a disabled worker, you must have worked recently and long enough under Social Security to be insured for purposes of establishing a period of disability or becoming entitled to disability insurance benefits. The general rule is that you must be fully insured and also have at least 20 quarters of coverage (QCs) in a 40-quarter period. (A QC is the basic unit of Social Security coverage used in determining a worker's insured status and is based upon earnings covered under Social Security.)

To meet the requirement of having 20 QCs in a 40-quarter period, you generally need credit for at least 5 years of work out of the 10 years ending when you become disabled. This rule is explained in 20 CFR 404.130.

How we determine whether you are fully insured for a period of disability or disability insurance benefits is explained in 20 CFR 404.132. A person who is statutorily blind only needs to be fully insured.

In order to protect younger persons who become disabled before age 31 and who have not worked long enough to obtain 20 QCs, there is a special rule. If you become disabled before age 31, you will be insured for a period of disability and disability insurance benefits if you are fully insured and have QCs in at least one-half of the quarters after you became age 21. However, you must have at least six QCs. In effect, this means that if you become disabled before age 24, you will need credit for one and a half years of work in the three year period ending when your disability starts. On the other hand, if you become disabled at age 24 through age 31, you will need credit for having worked half the time between age 21 and the time you become disabled. This special rule is explained further in 20 CFR 404.130.

Under the special rule, younger workers who become disabled before age 31 need fewer QCs to meet the insured status requirement than older workers. However, a younger worker, insured only under this special rule, who had a prior period of disability terminated and subsequently became disabled again at age 31 or later, frequently had difficulty establishing entitlement to disability insurance benefits again. Because of age, the worker no longer qualified for insured status under the special rule. Also, because of the previous disability, the worker often had not had sufficient time to obtain the necessary QCs required under the general rule before the subsequent disability began.

To correct this inequitable situation, Congress amended sections 216(i)(3) and 223(c)(1)(B) of the Social Security Act. Pub. L. 98–21, section 332, extends the application of the special disability insured status test for workers disabled before age 31. Thus, the Act now provides that if you had a period of disability terminated that began before age 31 and then become disabled again at age 31 or later, you will again be insured for disability insurance benefits and another period of disability if you are fully insured and have QCs in half the calendar quarters after age 21 and through the quarter in which the later period of disability began, up to a maximum of 20 QCs out of 40 calendar quarters. If the number of quarters during this period is an odd number, we reduce the number by one. If the period has less than 12 quarters, you must have at least 6 QCs in the 12-quarter period ending with that quarter. We do not count any quarter all or part of which is in a prior period of disability established for you, unless the quarter is the first or last quarter of this period and the quarter is a QC. This provision is effective for benefits payable for May 1983, the month after enactment of Pub. L. 98–21.

We are now proposing to amend 20 CFR 404.130 and 404.132 to reflect this change in the law pertaining to insured status.

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. The cost of implementing this disability insured status provision is negligible. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they only affect a small number of disability claimants.

Paperwork Reduction Act

These proposed regulations will impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program No. 13.802, Social Security Disability Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, Survivors and Disability Insurance.

Dated: September 27, 1983.

Louis D. Enoff,

Acting Commissioner of Social Security.

Approval: November 2, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950——)

For the reasons set out in the preamble, Part 404, Subpart B, Chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

Subpart B—Insured Status and Quarters of Coverage

1. The authority citation for Subpart B reads as follows:

Authority: Secs. 205, 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act, 53 Stat. 1368, 64 Stat. 504 and 505, 68 Stat. 1080, 64 Stat. 512, 70 Stat. 815, and 49 Stat. 647; Sec 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631. 42 U.S.C. 405, 412, 413, 414, 416, 417, 423, and 1302; 5 U.S.C. Appendix.

2. Section 404.130 is revised to read as follows:

§ 404.130 How we determine disability insured status.

(a) *General.* We have four different rules for determining if you are insured for purposes of establishing a period of disability or becoming entitled to disability insurance benefits. To have disability insured status, you must meet one of these rules and you must be fully insured (see § 404.132 which tells when

the period ends for determining the number of quarters of coverage (QCs) you need to be fully insured).

(b) *Rule I—You must meet the 20/40 requirement.* You are insured in a quarter for purposes of establishing a period of disability or becoming entitled to disability insurance benefits if in that quarter—

(1) You are fully insured; and

(2) You have at least 20 QCs in the 40-quarter period (see paragraph (f) of this section) ending with that quarter.

(c) *Rule II—You become disabled before age 31.* You are insured in a quarter for purposes of establishing a period of disability or becoming entitled to disability insurance benefits if in that quarter—

(1) You have not become (or would not become) age 31;

(2) You are fully insured; and

(3) You have QCs in at least one-half of the quarters during the period ending with that quarter and beginning with the quarter after the quarter you became age 21; however—

(i) If the number of quarters during this period is an odd number, we reduce the number by one; and

(ii) If the period has less than 12 quarters, you must have at least 6 QCs in the 12-quarter period ending with that quarter.

(d) *Rule III—You had a period of disability before age 31.* You are insured in a quarter for purposes of establishing a period of disability or becoming entitled to disability insurance benefits if in that quarter—

(1) You are disabled again at age 31 or later after having had a prior period of disability established which began before age 31 and for which you were only insured under paragraph (c) of this section; and

(2) You are fully insured and have QCs in at least one-half the calendar quarters in the period beginning with the quarter after the quarter you became age 21 and through the quarter in which the later period of disability begins, up to a maximum of 20 QCs out of 40 calendar quarters; however—

(i) If the number of quarters during this period is an odd number, we reduce the number by one;

(ii) If the period has less than 12 quarters, you must have at least 6 QCs in the 12-quarter period ending with that quarter; and

(iii) No monthly benefits may be paid or increased under Rule III before May 1983.

(e) *Rule IV—You are statutorily blind.* You are insured in a quarter for purposes of establishing a period of disability or becoming entitled to disability insurance benefits if in that quarter—

(1) You are disabled by blindness as defined in § 404.1581; and

(2) You are fully insured.

(f) *How we determine the 40-quarter or other period.* In determining the 40-quarter period or other period in paragraph (b), (c) or (d) of this section, we do not count any quarter all or part of which is in a prior period of disability established for you, unless the quarter is the first or last quarter of this period and the quarter is a QC.

3. Section 404.132 is amended by revising the introductory paragraph to read as follows:

§ 404.132 How we determine fully insured status for a period of disability or disability insurance benefits.

In determining if you are fully insured for purposes of paragraph (b), (c), (d), or (e) of § 404.130 on disability insured status, we use the fully insured status requirements in § 404.110, but apply the following rules in determining when the period of elasped years ends:

* * * * *

[FR Doc. 83-31966 Filed 11-29-83; 8:45 am]
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Food and Drug Administration

21 CFR Part 161

[Docket No. 83N-0350]

Quick-Frozen Fillets of Flat Fish; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interesting persons an opportunity to review the "Recommended International Standard for Quick-Frozen Fillets of Flat Fish" (Codex Standard No. CAC/RS 91-1976) and to comment on the desirability of and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration of acceptance by the Food and Agriculture Organization/World Health Organization's Codex Alimentarius Commission. If the comments received do not support the need for a U.S. standard for this food, FDA will not propose a standard.

DATE: Comments by January 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0116.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. Under the FAO/WHO program, a large number of food standards have been developed and submitted to governments for acceptance, including a Codex standard for quick-frozen fillets of flat fish.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country which concludes that it will accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a U.S. standard under authority of section 401 of the act (21 U.S.C. 341), or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there are no U.S. standards for quick-frozen fillets of flat fish.

Under the procedure prescribed in 21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment on: (1) The desirably of and need for a U.S. standard of identity for quick-frozen fillets of flat fish; (2) the

specific provisions of the Codex standard; (3) additional or different requirements that should be in the U.S. standard, if established; and (4) any other pertinent points.

FDA advises that if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, the Codex Alimentarius Commission will be informed that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Because of the large number of countries, often with diverse food regulations, that are associated with the development of Codex standards, certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements, such as declaration of the net quantity of contents, name of manufacturer, and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 401 of the act; rather, they are dealt with under the authority of other sections of the act.

The Codex standard for quick-frozen fillets of flat fish specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA's policy is to employ the methods in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 161

Fish, Food standards, Seafood.

The Codex standard under consideration is as follows:

Recommended International Standard for Quick Frozen Fillets of Flat Fish

1. Scope.

This standard applies to quick frozen fillets of edible species of the order Pleuronectiformes (Heterosomata) offered for direct consumption without further processing. It does not apply to the product indicated as intended for further processing or for other industrial purposes.

2. Description.

2.1 *Product Definition.*

2.1.1 Quick frozen fillets of flat fish are obtained from fish of any edible species of the order mentioned above.

2.1.2 Fillets are slices of fish of irregular size and shape which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

2.2 *Process Definition.*

The product shall be subjected to a freezing process and shall comply with the conditions laid down hereafter. The freezing process shall be carried out in appropriate equipment in such a way that the range of temperature of maximum crystallization is passed quickly. The quick freezing process shall not be regarded as complete unless and until the product temperature has reached − 18°C (0°F) at the thermal centre after thermal stabilization. The product shall be maintained under such conditions as will maintain the quality during transportation, storage and distribution up to and including the time of final sale.

The recognized practice of repacking quick frozen products under controlled conditions followed by the reapplication of the quick freezing process as defined is permitted.

2.3 *Presentation.*

The product shall be presented as:

(a) Skin-on; or

(b) Skin-on, on light side only; or

(c) Skinless.

The fillets may be presented as boneless, provided that boning has been completed.

3. *Essential Composition and Quality Factors.*

3.1 *Raw Material.*

Quick Frozen fillets of flat fish shall be prepared from clean, sound fish of the designated order which are of a quality such as to be fit to be sold fresh for human consumption.

3.2 *Final Product.*

3.2.1 Appearance.

(a) The fillets shall be free from foreign matter and all internal organs and shall be reasonably free from ragged edges, tears and flaps, fins or part fins, significantly discoloured flesh, blood clots, parasites and, where appropriate, skin, scales, bones and black membrane (belly wall).

(b) The final product shall be free from deep dehydration (freezerburn) which cannot easily be removed by scrapping without unduly affecting the quality and appearance of the final product.

(c) The final product shall be free from small fillet pieces unless their presence is necessary to make up the weight of the container. A piece weighing less than 25 g is classed small. The maximum number of small fillet pieces permitted is one per container except as provided for in sub-section 6.1.1.

3.2.2 Odour, Flavour, Colour and Texture.

After cooking by steaming, baking or boiling as set out in sub-section 7.3 the product shall have a flavour characteristic of the species and shall be free from any objectionable odour and flavour, and its texture shall be firm and free from abnormal conditions such as chalkiness and milkiness.

3.2.3 Glazing.

Flat fish may be glazed either individually or in bulk. When glazed the coating of ice shall cover the product so as to minimize dehydration and oxidation. The water used in glazing shall be of potable quality. Standards for potability shall be not less than those contained in the "International Standards for Drinking Water", World Health Organization (3rd Edition).

3.2.4 Defects and Tolerances.

A recommended table of physical defects, as defined in Annex A, for optional use with consignments of the final product with an AQL of 6.5 is appended as Annex B.

4. *Food Additives.*

Additive	Maximum level in the final product
Monophosphate, monosodium or monopotassium (Na or K orthophosphate).	5 g/kg expressed as P_2O_5, singly or in combination.
Diphosphate, tetrasodium or tetrapotassium (Na or K pyrophosphate).	
Triphosphate, pentasodium or pentapotassium or calcium (Na, K or Ca tripolyphosphates).	
Polyphosphate, sodium (Na hexametaphosphate).	
Ascorbate, sodium or potassium salts.	1 g/kg expressed as ascorbic acid.

5. *Hygiene and Handling.*

5.1 It is recommended that the product covered by the provisions of this standard be prepared and handled in accordance with the following codes:

(i) the appropriate sections of the Recommended International Code of Practice—General Principles of Food Hygiene (CAC/RCP 1–1969)

(ii) the Recommended Code of Practice for Frozen Fish (CX/FFP 77/8).

5.2 To the extent possible in good manufacturing practice, the product shall be free from objectionable matter.

5.3 When tested by appropriate methods of sampling and examination, the product:

a. Shall be free from micro-organisms in amounts harmful to man;

b. Shall be free from parasites harmful to man; and

c. Shall not contain any substances originating from micro-organisms in amounts which may represent a hazard to health.

6. *Labelling.*

In addition to Sections 1, 2, 4 and 6 of the Recommended International General Standard for the Labelling of Prepackaged Foods (CAC/RS 1-1969) the following specific provisions apply.

6.1 *Name of the Food.*

6.1.1 The name of the product as declared on the label shall be the name according to the law, custom or practice in the country in which the product is to be distributed.

Packs of fillets cut from blocks which may possibly contain a number of small pieces in excess of the number permitted in sub-section 3.2.1(c) may be labelled as fillets of . . . . provided that such labelling is customarily used in the country where the products are to be sold and provided the product is identified to the consumer so that he will not be misled.

6.1.2 In addition there may appear on the label reference to the form of presentation as skin-on or skinless and/or boneless, as appropriate. This information shall be included if the omission of such labelling would mislead the consumer.

6.1.3 The term "quick frozen" shall also appear on the label, except that the term "frozen" [1] may be applied in countries where this term is customarily used for describing the product processed in accordance with subsection 2.2 of this standard.

6.2 *List of Ingredients.*

A complete list of ingredients shall be declared on the label in descending order of proportion. The provisions of sub-sections 3.2(b) and 3.2(c) of the Recommended International General Standard for the Labeling of Prepackaged Foods (CAC/RS 1-1969) shall also apply.

6.3 *Net Contents.*

6.3.1 The net contents shall be declared by weight in either the metric system ("Système International" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

6.3.2 Where products have been glazed the declaration of net contents of the product shall be exclusive of the glaze.

6.4 *Name and Address.*

The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food shall be declared.

6.5 *Country of Origin.*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.6 *Lot Identification.*

Each container shall be permanently marked in code or in clear to identify the producing factory and the lot.

7. *Methods of Sampling, Analysis and Examination.*

The methods of sampling, analysis and examination described or referred to hereunder are international referee methods.

7.1 *Sampling for Destructive Examination.*

Sampling of lots for examination of the product shall be in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (AQL-6.5) (CAC/RM 42-1969).

7.2 *Thawing Procedure* (CAC/RM 40-1971).

The sample to be examined for physical defects is thawed by enclosing it in a film type bag and immersing in an agitated water bath held at approximately 20°C (68°F). The complete thawing of the product is determined by gently squeezing the bag occasionally so as not to damage the texture of the fish, until no hard core or ice crystals are felt.

7.3 *Cooking Procedure.*

Steaming—Steam the sample in a closed dish over boiling water for about 35 minutes if frozen, or for about 20 minutes after thawing the product. The dish should be covered and should be kept in a water bath at 60°C (140°F) during testing.

Baking—Place the sample in a baking pan lined with aluminium foil. Cover the pan with a sheet of aluminium foil and crimp the foil around the edges of the top of the pan. Place the pan and contents in a pre-heated oven maintained at 230°C (450°F) until cooking is completed. This requires about 20 minutes.

Boiling in Bag—Place the sample into a boilable film-type pouch and seal. Immerse the pouch and its contents into boiling water and cook until the internal temperature of the fillet sample reaches 70°C (160°F) which requires about 20 minutes. Remove the boiled product from the pouch and drain.

7.4 *Examination for Physical Defects.*

The sample may be examined for physical defects set out in Annex A according to Annex B.

7.5 *Organoleptic Assessment*

Organoleptic assessment of the product shall be made only by persons trained in such assessment and shall take place after the sample has been cooked by a method set out in sub-section 7.3

7.6 *Determination of Net Contents of Products Covered by Glaze.*

(1) As soon as a package is removed from low temperature storage open immediately and place the contents under a gentle spray of cold water. Agitate carefully so that the product is not broken. Spray until all ice glaze that can be seen or felt is removed.

(2) Transfer the product to a circular No. 8 sieve, 20 cm (8 inches) in diameter for samples weighing less than 900 g (2 pounds) and 30 cm (12 inches) for those more than 900 g (2 pounds). Without shifting the product incline the sieve at an angle of approximately 17-20° to facilitate drainage, and drain exactly 2 minutes (stop watch). Immediately transfer the product to a tared pan and weigh (Methods of Analysis of AOAC 18.001).

8. *Classification of Defectives.*

A container which fails to meet one or more of the quality requirements for the final product (sub-sections 3.2.1 (a), (b) and (c) shall be considered as "defective".

9. *Lot Acceptance.*

A lot will be considered as meeting the final product requirements of this standard when:

(a) The total number of "defectives" does not exceed the acceptance number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (AQL-6.5) (CAC/RM 42-1969); and

(b) The average net contents of all containers examined is not less than the declared net contents.

Annex A.—Definition of Defects in Quick Frozen Fillets of Flat Fish

Bones: Bones exceeding the sizes specified in Annex B except for pin bones in fillets not designated as boneless. Cartilagenous material and rudimentary pin bones which are not perceptible after cooking shall not be considered bone defects.

Blood clots: Any lump or mass of clotted blood greater than 5 mm in any dimension.

External fins or part fins: Part fins are two or more rays connected by a membrane.

Skin: A piece of skin larger than 3 cm^2 on fillets presented as skinless, or any such piece of dark skin on fillets presented as skin on light side only.

[1] "Frozen": This term is used as an alternative to "quick frozen" in some English speaking countries.

Belly wall: Any piece of the black membrane lining the belly wall that is larger than 3 cm^2.

Discoloration: Any significant discoloration larger than 5 cm^2, including naturally occurring dark pigmented spots on the skin of the light side, in fillet packs designated as skin on light side only.

Parasites:

a. *Nematodes*—Each nematode with a capsular diameter greater than 3 mm or each worm not encapsulated, greater than 1 cm in length, or each worm which is objectionable by virtue of its dark colour or any other characteristic.

b. *Other Parasites*—(to be elaborated in due course).

Annex B.—Recommended Defect Table—Quick Frozen Fillets of Flat Fish

This table and the maximum allowable number of instances of defects are based on an AQL of 6.5. The defect table is not to be applied to individual packs but to consignments in association with the appropriate Sampling Plan. Instances of defects are assigned for the indicated occurrences in one kilogramme of product.

Type of defect	One instance	Additional instance
Bones		
—fillets not designated as boneless.	A single bone greater than 5 mm in any dimension, or an agglomeration of such bones within an area of 3 cm^2.	Each additional occurrence, or an agglomeration of such bones covering an area greater than 3 cm^2.
—fillets designated as boneless.	A single bone greater than 5 mm in any dimension.	Each additional occurrence.
Blood clots	A clot greater than 5 mm in any dimension.	Each additional occurrence.
External fins	A fin or part fin 3 cm^2 or less.	Each additional occurrence and, for each fin or part fin over 3 cm^2, every additional complete 3 cm^2.
Skin (fillets designated as skinless or skin on light side only).	A piece greater than 3 cm^2 up to and including 5 cm^2.	Each additional occurrence and, for each piece over 5 cm^2, every additional complete 5 cm^2.
Belly wall (black membrane).	A piece greater than 3 cm^2 up to and including 5 cm^2.	Each additional occurrence and, for each piece greater than 5 cm^2, every additional complete 5 cm^2.
Discoloration	A significant discoloration of the flesh greater than 5 cm^2 up to and including 10 cm^2.	Each additional occurrence and, for each significant discoloration over 10 cm^2, every additional complete 5 cm^2.
Parasites	A parasite with a capsular diameter greater than 3 mm or a worm not encapsulated, greater than 1 cm in length, or a worm which is objectionable by virtue of its dark colour or any other characteristic.	Each additional occurrence.

Maximum Allowable Tolerances for Defects: A sample of 1 kg is considered defective if it contains:
(a) more than 4 instances of bone defects; or
(b) a total of more than 7 instances of defects for fillets presented as skin on; or
(c) a total of more than 8 instances of defects for fillets presented as skinless or skin on light side only.

Interested persons may, on or before January 30, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: November 15, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-31877 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 201 and 330

[Docket No. 82N-0050]

Citizen Petition on the Requirement for a Pregnancy-Nursing Warning for Over-the-Counter Drugs; Notice of Availability and Opportunity for Public Comment

AGENCY: Food and Drug Administration.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a citizen petition filed by the Public Citizen Health Research Group requesting an amendment to the pregnancy-nursing warning label requirement for over-the-counter (OTC) drugs to include all OTC drugs, whether or not they are intended for systemic absorption.

DATE: Comments by January 30, 1984.

ADDRESS: Written comments and requests for single copies of the petition to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 54750), the agency proposed that a pregnancy-nursing warning be required for all OTC drugs that are systemically absorbed. The proposed warning, "As with any drug, if you are pregnant or nursing a baby seek professional advice before using this product," was similar to a warning required by California for drugs *intended* for systemic absorption.

The final rule, published in the **Federal Register** of December 3, 1982 (47 FR 54750), was similar to the proposed rule, but clarified that the agency did not intend to include drugs absorbed in amounts so small as to have no pharmacological or toxicological significance, and that drugs that are not intended for systemic absorption need not bear the warning (47 FR 54751). For example, OTC drugs used topically or mouthwashes regulated as OTC drugs, which, because of their method of use, are not intended to be systemically absorbed, are not covered by the regulation. This approach is consistent with that of the California regulation, which, as stated above, applies only to drugs intended for systemic absorption into the human body. Upon receipt of appropriate data, however, a specific pregnancy warning may be proposed as part of the OTC drug review for any OTC drug product, including one that is not intended for systemic absorption.

The Public Citizen Health Research Group (the petitioner), 2000 P Street NW., Washington, DC 20036, has petitioned FDA under the provisions of § 10.30 *Citizen Petition* (21 CFR 10.30) to amend the requirement for the pregnancy-nursing warning label for OTC drugs in § 201.63(a) and § 330.2 (21 CFR 201.63(a) and 330.2) by extending

the labeling requirement to all drugs, whether or not they are intended for systemic absorption.

Summary of Petitioner's Views

The following narrative summarizes the information and arguments presented by the petitioner in support of its proposal. The material included in the narrative does not necessarily represent the views of the agency.

The distinction that FDA has drawn between OTC drugs intended for systemic absorption and those not intended for systemic absorption cannot be justified. Many, if not all, topically applied OTC drugs (such as creams and ointments applied to the skin) are absorbed through the skin and enter the bloodstream to some degree. Once they enter the bloodstream, these drugs have the potential to harm the fetus and the nursing infant, just like drugs that are "intended" for systemic absorption. Thus, because the purpose of the regulation is to ensure that pregnant and nursing women are aware of the harm that may result from their use of OTC drugs, all such drugs, even those not intended for systemic absorption, should be subject to the labeling requirement.

The agency stated that it did not intend to include drugs that are absorbed in insignificant amounts (47 FR 54751). However, even if a topical preparation contains only a small amount of a drug, or even if only a small amount of a topically applied drug is systemically absorbed, the concentration of drug in the blood or in breast milk may still be sufficient to harm the fetus or the nursing infant. Thus, topically applied drugs that contain even small quantities of active ingredients may cause birth defects (or developmental defects). Furthermore, the OTC pregnancy and nursing warning currently in effect applies to all drugs intended for systemic absorption and does not distinguish between products on the basis of the amount of active ingredients that they contain.

It should not be necessary to prove that a particular OTC drug that is not intended for systemic absorption is harmful to the fetus or the nursing infant in order to require that the drug bear a warning label concerning use during pregnancy and nursing. Such proof is not required for those drugs already covered by the labeling rquirement. In discussing the type of evidence necessary to establish the need for a warning label on OTC drugs that are intended for absorption, FDA stated that "athough there is at present a lack of specific evidence to show that many of these drugs cause harm to the fetus or nursing infant, the agency believes that existing evidence establishing the potential for some OTC drugs to have harmful effects on the fetus or nursing infant warrants warning pregnant and nursing women to exercise caution and seek advice from a health professional." (See 47 FR 54754.)

Absolute proof that a particular OTC drug is systemically absorbed should not be necessary to invoke the labeling requirement because, as a general rule, drugs applied to the skin or mucous membrane are systemically absorbed to some degree. Drug absorption through the skin is known to increase when the skin is inflamed or diseased, and these conditions are likely to exist when topically applied OTC drugs are being used. Thus, FDA must err on the side of caution and assume that all OTC drugs are systemically absorbed unless a manufacturer can prove otherwise.

Many OTC drugs that are not "intended" for systemic absorption are known to be systemically absorbed. Some of these drugs, when taken orally, have been associated with birth defects. In some cases, the risk of birth defects from these drugs is considered to be serious enough to warrant a specific warning on the label when the drug appears in a prescription formulation. Such drugs provide the strongest evidence that OTC drugs, even those that are not intended for systemic absorption, may pose a risk to the fetus or the nursing infant and should be required to carry the general warning concerning their use during pregnancy and while nursing. Examples of such drugs are as follows:

Hydrocortisone (cortisol) and hydrocortisone acetate are corticosteroids and constitute the primary active ingredients in several OTC topical anti-itch medications. "The Handbook for Prescribing Medications During Pregnancy" states that "chronic maternal steroid ingestion during the first trimester has been associated with approximately a 1% incidence of cleft palate in human offspring. Because of animal studies suggesting an effect on neurological and pulmonary development in fetuses exposed to steroids in utero, caution is necessary in administering such drugs to pregnant women." When used in its topical form, hydrocortisone will not be required to carry the new warning because it is not intended for systemic absorption. However, there is a possibility that hydrocortisone causes birth defects or developmental defects at the level of exposure that results from its use in an OTC cream.

Diphenhydramine hydrochloride is an antihistamine contained in a variety of prescription and OTC medications. In OTC preparations, it is used topically as an anti-itch medication for the relief of itching associated with rashes, insect bites, and other minor skin irritations. The following warning on the use of diphenhydramine appears in "The Handbook for Prescribing Medications During Pregnancy": "Because of its possible association with an increased incidence of oral clefts, diphenhydramine should not be used in the first trimester [of pregnancy] for reducing self-limited symptoms and the discomfort of allergies." Furthermore, diphenhydramine is not recommended for use by nursing mothers because it may inhibit lactation, and small amounts may be excreted in breast milk. Even though topical preparations will not be required to bear a warning, diphenhydramine is known to be systemically absorbed when topically applied, and the amount of diphenhydramine contained in OTC topical preparations is not insignificant. Absorbed quantities of topically applied diphenhydramine could equal or exceed those reached by the use of prescription capsules or OTC oral formulations of diphenhydramine, both of which will carry warnings about use during nursing and pregnancy. For example, a 1-ounce tube of a diphenhydramine cream may contain 560 milligrams (mg) of diphenhydramine hydrochloride. In contrast, prescription capsules contain 25 and 50 mg of diphenhydramine hydrochloride, and a 4-ounce bottle of an OTC cough syrup contains 330 mg of diphenhydramine hydrochloride (12.5 mg per teaspoon). A pregnant or nursing woman with a bad rash or serious case of poison ivy could easily use one-third of a 1-ounce tube of cream in one application. Even if only one-fifth of the applied substance (180 mg) was systemically absorbed, the absorbed amount (36 mg) would be greater than that contained in 2 teaspoons of cough syrup.

Estogens and progesterone, both of which are known to cause birth defects, are contained in several currently marketed hormone creams. The current detailed patient package insert for combination oral contraceptives warns that oral contraceptives should not be taken by pregnant women because they may damage the developing child. In addition, the insert warns that the developing female child whose mother has received diethylstilbestrol, an estrogen, during pregnancy has a risk of getting cancer of the vagina or cervix in her teens or young adulthood. This risk, according to the insert, is estimated to be about 1 in 1,000 exposures or less. The insert also states that "abnormalities of the urinary and sex organs have been reported in male offspring so exposed. It is possible that other estrogens such as the estrogens in oral contraceptive could have the same effect in the child if the mother takes them during pregnancy."

Identical or similar warnings are included in patient package inserts for other oral contraceptives, conjugated estrogens (including estrogen cream for vaginal use), and esterified estrogens. Patient information sheets for oral contraceptives are also required to contain a warning stating that the hormones in the drug are known to appear in breast milk, and that they may also decrease the quantity of milk produced.

Progesterone has not been well studied with respect to systemic absorption from topical application. However, FDA requires a patient package insert for progestational drugs to warn about the risk of birth defects from the use of these drugs during pregnancy.

Many other OTC drugs not "intended" for systemic absorption are known to be systemically absorbed when applied topically and can reach toxic concentrations in the blood. Because these drugs can be toxic to the user when topically applied, it is likely that they can also harm the fetus or the nursing infant when absorbed from topical preparations. Among these drugs is neomycin sulfate, an antibiotic contained in several OTC ointments. Neomycin sulfate is used to prevent infection and to aid the healing of minor cuts, burns, and abrasions. However, deafness, one of the effects of neomycin toxicity, has been reported following topical use of this drug.

Other topically applied drugs that can cause toxic effects when systematically absorbed are dibucaine, lidocaine, and tetracaine, which are local anesthetics used

in OTC topical medications for the relief of pain and itching. Because some of these drugs are contained in preparations indicated for the treatment of hemorrhoids, they are applied to the rectal area, where there is a good chance that they will come into contact with mucous membrane. The mucous membrane of the rectum permits a high degree of absorption of many substances. Consequently, systemic absorption of these products is very likely to occur when they are applied inside or near the rectum. Because pregnant women are particularly prone to developing hemorrhoids, they may well use these products.

Boric acid, salicyclic acid, and phenol are other examples of drugs that are known to be systemically absorbed and capable of producing toxic effects. Boric acid is an antiseptic contained in products used to treat hemorrhoids. Salicyclic acid is an antimicrobial ingredient contained in many OTC medications used in the treatment of athlete's foot, jock itch, acne, psoriasis, and dandruff. It is also found in wart removers. Phenol is an analgesic and antiseptic found in many OTC drug products.

Many other drugs contained in OTC topical drug products are known to be absorbed through the skin. Although not known to cause birth defects or to be toxic to the user, they are systemically absorbed and thus have the potential to harm the fetus or the nursing infant. Examples of such drugs are histamine dihydrochloride, a topical analgesic; resorcinol, a topical analgesic and keratolytic contained in such products as acne creams and a feminine itching medication; tripelennamine, an antihistamine contained in some topical analgesics; and benzoyl peroxide, an antimicrobial drug that is the chief ingredient in many anti-acne medications.

Other examples of topically applied OTC drug products are mouthwashes, gargles, throat sprays, and other oral antimicrobial drugs. The final rule requiring the pregnancy-nursing warning specifically exempted mouthwashes (47 FR 54751). However, these products, too, may be systemically absorbed, and adverse effects may result from systemic absorption.

Most of the examples that have been cited are topically applied OTC drugs. However, there are many other types of OTC drugs that are not "intended" for systemic absorption but that may be systemically absorbed and thus pose a potential danger to the fetus and the nursing infant. Many of these products are frequently not thought of as drugs, but they are drugs and are regulated as such by FDA. Examples of such drugs are dandruff shampoos, products for hair growth and hair removal, lice-killing ingredients (pediculicides), antiperspirants, and sunscreen products.

The preceeding examples are not meant to be an exhaustive review of the scientific evidence on the systemic absorption of OTC drugs that are not intended for systemic absorption. Rather, the examples are sufficient to illustrate the unscientific nature of FDA's distinction between drugs "intended" for systemic absorption and other OTC drugs.

Under section 502(a) of the Federal Food, Drug, and Cosmetic Act, a drug is misbranded, and this cannot be sold, if its labeling is "false or misleading in any particular." Labeling is "misleading" if it fails to reveal material facts "with respect to consequences which may result from use" of the drug. FDA has determined that any systemically absorbed drug used during pregnancy or while nursing "may pose some risk to the fetus or newborn child" (47 FR 54754). Thus, this is a material fact that must be disclosed in the labeling of all drugs that are systemically absorbed, whether such absorption is intended or not. By limiting the scope of the final rule to only those drugs "intended" for systemic absorption, FDA has failed to cure the misbranding of all drugs that pose a threat to the fetus or nursing child. "For the same reasons, we believe that FDA has acted in an arbitrary and capricious manner in violation of section 10(e) of the Administrative Procedure Act, 5 U.S.C. 706."

The petitioner concludes by urging FDA to grant the petition and amend the labeling requirement to apply to all OTC drugs. The petitioner states that this amendment should include all OTC drugs that are not intended for systemic absorption but that are known to be systemically absorbed, as well as all OTC drugs that have not yet been studied, because they may be systemically absorbed. The petitioner contends that FDA must assume that all OTC drugs are capable of systemic absorption, and thus should be subject to the labeling requirements, unless a manufacturer is able to demonstrate otherwise in a particular case.

The petitioner asks that the agency respond to the petition as quickly as possible. The petitioner explains that if FDA grants the petition, and does so promptly, manufacturers of newly affected OTC drug products will have sufficient time to comply with the amended regulation by December 5, 1983, the date by which all currently affected products must meet the current labeling requirement.

The agency notes that, because of the 60-day comment period provided for in this document and the time that will be needed to evaluate the comments, it will be unable to reach a final decision on the merits of the petitioner's request before the December 5, 1983 effective date for implementation of the pregnancy-nursing warning requirement. In an interim response the agency notified the petitioner of this fact. The agency will, however, take final action on the petition as soon as possible.

Request for Comments

The petitioner raises issues that need to be addressed before FDA can make a final decision on the feasibility of amending the requirement for the pregnancy-nursing warning. Therefore, in accordance with § 10.30(h)(3) (21 CFR 10.30(h)(3)), the Commissioner of Food and Drugs is seeking public comments on the following questions before reaching any decision on the petition.

1. Does the current requirement, which exempts from the pregnancy-nursing warning label OTC drugs not intended for systemic absorption, adequately protect the fetus and the nursing child, even though it is known that certain of these drugs can be systemically absorbed to some degree when applied topically?

2. Under what circumstances, if any, should FDA request a pregnancy-nursing warning label for OTC drugs not intended for systemic absorption? For example:

Should FDA require a warning label if it knows that a topical OTC drug is systemically absorbed?

Should FDA require a warning label on the assumption that all drugs are capable of systemic absorption even though they have not yet been studied and there is no evidence that the OTC drug is systemically absorbed?

3. What data are available on the active ingredients in OTC drugs that are not intended for systemic absorption and that have been associated with birth defects (e.g., estrogens, hydorcortisone)?

4. What data are available on the amount of active ingredients in OTC drugs that are not intended for systemic absorption, but that are absorbed into the body?

The complete petition is on public display between 9 a.m. and 4 p.m., Monday through Friday, in the Dockets Management Branch. Requests for single copies of the petition may be submitted to the Dockets Management Branch and should be identified with the docket number found in brackets in the heading of this document.

Interested perons may, on or before January 30, 1984 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane Rockville, MD 20857, written comments regarding this petition. Three 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 and may be accompanied by a supporting memorandum or brief. The petition and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

If, after reviewing the comments and other information available to him, the Commissioner concludes that the petition has sufficient merit, he will

propose to amend the regulations requiring the pregnancy-nursing warning for OTC drugs to include all OTC drugs that are systemically absorbed. The Commissioner issues this notice under section 701(a) of the Federal Food, Drug, and Cosmetic Act and 21 CFR 10.30.

Dated: November 23, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-31959 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Consideration of Amendments to the Kentucky Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on certain amendments submitted by the Commonwealth of Kentucky to its program for the regulation of surface coal mining and reclamation in the State published at 47 FR 31890, July 23, 1982, and 47 FR 39536, Sept. 8, 1982). The amendments relate to (1) operations involving the crushing, screening or loading of coal, and (2) auger mining. OSM is reopening the comment period to allow the public sufficient time to consider and comment on the proposed amendments.

DATES: Written comments, data or other relevant information must be received on or before 4:00 p.m. December 30, 1983 to be considered.

ADDRESSES: Comments should be sent or hand-delivered to: W. H. Tipton, Director, Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION: On May 28, 1982, OSM received, pursuant to the 30 CFR 732.17 State program amendment procedures, certain revisions to the State rules and laws. On July 23, 1982, OSM published a notice in the **Federal Register** announcing receipt of the amendments to the Kentucky program and inviting public comment thereon (47 FR 31890-31896). The public comment period ended August 23, 1982. A public hearing was held August 12, 1982. OSM published a second notice in the **Federal Register** on September 8, 1982, announcing receipt of provisions to satisfy conditions (k) and (l), and inviting public comment on whether the proposed amendments corrected these deficiencies (47 FR 39536-39537). The public comment period ended October 8, 1982. A public hearing scheduled September 22, 1982, was not held because no one expressed a desire to present testimony.

On January 4, 1983 (48 FR 245-252), OSM published a notice in the **Federal Register** which (1) removed and amended certain conditions; (2) approved certain other program amendments; (3) deferred Secretarial action on the following proposed Kentucky rule revisions: 405 KAR 7:020 Section 1(86), 8:050 Section 2, 16:020 Section 4 and 16:190 Section 2(2); (4) deferred Secretarial action on the following proposed Kentucky statutory revisions: KRS 350.060 Sections 5(21) and 5(22), 350.093(2), and 350.062(9), contained in Senate Bill 218; (5) approved certain clarifications to the Kentucky program contained in a letter from the State, dated June 18, 1982; (6) deferred Secretarial action on the clarification in the June 18, 1982, letter relating to incidental boundary revisions; and (7) deferred Secretarial action on whether the material submitted by Kentucky satisfied condition (1).

On May 13, 1983 (48 FR 21574-21579), OSM published a notice in the **Federal Register** which (1) removed condition (1); (2) approved amendments to KRS 350.062(9) and 350.093(2), and 405 KAR 16:020 Section 4; and 3) created two new conditions of approval, relating to the deferral of contemporaneous reclamation (KRS 350.093(2) and 405 KAR 16:020 Section 4) and the definition of "principal shareholder" (KRS 350.060 Section 5(g) and 405 KAR 7:020 Section 1(86)).

On April 28, 1983 (48 FR 19314-19322), OSM published a notice in the **Federal Register**, effective May 27, 1983, revising its rules for conducting auger mining. On May 5, 1983 (48 FR 20392-20402), OSM published a notice in the **Federal Register**, effective June 6, 1983, amending its rules applicable to support facilities and coal preparation plants. These OSM rule revisions relate to certain of the items listed above on which the Secretary deferred action in the January 4, 1983 **Federal Register** notice as follows: (1) 405 KAR 8:050 Section 2 and 16:190 Section 2(2), and KRS 350.060 Section 5(21) (augering), and (2) KRS 350.060 Section 5(22) (support facilities and coal preparation plants).

In the **Federal Register** dated June 13, 1983, OSM reopened the comment period to allow the public sufficient time to review and comment on the above Kentucky amendments (48 FR 27101). The public comment period closed June 28, 1983.

On July 11, 1983 (48 FR 31668-31669), OSM published a notice in the **Federal Register** reopening the comment period to allow the public additional time to review and comment on the above Kentucky amendments. The public comment period closed July 26, 1983.

On September 16, 1983 (48 FR 41720-41735), OSM published a notice in the **Federal Register** amending its rules on remining.

On October 31, 1983, OSM received additional material from Kentucky, responding to four issues raised by OSM regarding the Kentucky amendments. This material consisted of an explanatory letter and a legal opinion, dated October 26, 1983, addressing crusher and loader jurisdiction and augering on previously mined areas. OSM also received a number of emergency regulations including revisions to 405 KAR 16:190 and 18:190, regarding requirements for adequate drainage on backfilled areas and criteria for determining reasonably available spoil to backfill highwalls to the extent practical and feasible.

OSM is reopening the comment period for an additional 30 days to allow the public sufficient time to review and comment on the above Kentucky amendments in light of OSM's September 16, 1983, rule revisions and the material submitted by the State on October 31, 1983. If the amendments are approved, they will become part of the Kentucky program.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of SMCRA.

Dated: November 22, 1983.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 83-31939 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Designation of Serving Post Offices for Acceptance of Electronic Computer Originated Mail

AGENCY: Postal Service.

ACTION: Extension of time to comment.

SUMMARY: On October 21, 1983, the Postal Service issued a proposed rule which would amend the interim regulations designating the Serving Post Offices (SPOs) at which E-COM messages may be deposited. Comments on the proposed rule were due November 21, 1983. At the request of interested parties, the Postal Service is extending the comment period until December 21, 1983.

DATE: Comments must be received on or before December 21, 1983.

ADDRESS: Written comments should be addressed to the Director, E-COM Operations Office, Mail Processing Department, U.S. Postal Service, Washington, D.C. 20260-7140. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6624, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ed Senft, E-COM Operations Office, 202/245-5780.

SUPPLEMENTARY INFORMATION: The Postal Service does not presently require that E-COM users deposit their messages at any specified SPO. They are permitted to use any E-COM SPO.

On October 21, 1983, the Postal Service proposed a rule that would require, with two exceptions, that all E-COM messages must be deposited at the SPO primarily responsible for serving the area to which the material is addressed. 48 FR 48850 (October 21, 1983).

Comments on the proposed rule were due November 21, 1983. Several interested parties have requested an extension of time to comment on this proposed rule. The Postal service has concluded that an extension of time to comment would be in the public interest and, therefore, grants an extension to December 21, 1983.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-32001 Filed 11-29-83; 8:45 am]

BILLING CODE 7710-12-M

GENERAL SERVICES ADMINISTRATION

Office of Information Resources Management

41 CFR Part 101-36

Federal Hardware, Software, and Telecommunication Standards

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposal to add standard terminology for use in requirements documents, including solicitations, regarding the implementation of Federal Information Processing Standards (FIPS) and Federal Telecommunication Standards (FED-STDS) to the Federal Property Management Regulations (FPMR). The purpose of this FPMR action is to implement the following Federal standards into Federal government information management procedures. FIPS Publication (PUB) 60-1 (now 60-2), Input/Output (I/O) Channel Interface, has been revised to make it less restrictive and to enable Federal users to acquire newer and more efficient technology. FIPS PUB 63 (now 63-1), Operational Specifications for Variable Block Rotating Mass Storage Subsystems, has been revised to be applicable only to variable block rotating mass storage subsystems. FIPS PUB 97, Operational Specifications for Fixed Block Rotating Mass Storage Subsystems, defines the interface specifications for connecting a fixed block storage subsystem so that it becomes a part of an ADP system. FIPS PUB 98, Message Format for Computer Based Message Systems, provides for the separation of transmitted information so that a Computer Based Message System (CBMS) can locate and operate on that information. FIPS PUB 100/FED-STD 1041, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Communication Networks, adopts a subset of the International Telegraph and Telephone Consultative Committee (CCITT) Recommendation X.25 for operating in the packet mode in public data networks. The intent is to increase economy and efficiency by applying standards for automatic data processing and telecommunication systems.

DATE: Comments must be received on or before December 30, 1983.

ADDRESS: Comments should be submitted to the General Services Administration, KMPP, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: .P. Patton, Policy Branch, Office of Information Resources Management Policy (202-566-0194). The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: (a) FIPS PUBS are developed by the National Bureau of Standards (NBS) and are issued by the Secretary of Commerce.

(b) Federal Telecommunication Standards (FED-STDS) are developed by the National Communications System and are issued by the General Services Administration.

(c) The establishment of the requirement for Federal agencies to implement specific FIPS PUBS and FED-STDS in their information resource systems is accomplished through the publication of appropriate provisions in Subpart 101-36.13 of the FPMR. The proposed rulemaking is for this purpose for the standards listed in the Summary of this notice.

(d) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more;: a major increase in cost to consumers or others; or significant adverse effects. The General Services Administration's decisions are based on adequate information concerning the need for and consequences of this rule. This is a Government-wide management regulation that will have little or no effect on society.

List of Subjects in 41 CFR Part 101-36

ADP, computer technology, Government procurement and property management, Security measures.

Dated: November 21, 1983.

Frank J. Carr,

Assistant Administrator for Information Resouces Management.

[FR Doc. 83-31956 Filed 11-29-83; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status and Critical Habitat for the Big Spring Spinedace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Big Spring Spinedace (*Lepidomeda mollispinis pratensis*) to be Threatened and to delineate its Critical Habitat. This action is being proposed because one population of this subspecies has been eliminated and the remaining population is threatened by habitat alteration and the introduction of exotic species. Also, the present limited distribution of the existing population leaves it vulnerable to extirpation by a major flood or severe drought. The Big Spring Spinedace occurs in a single habitat, Meadow Valley Wash in Condor Canyon, northeast of Panaca, Nevada, which is being proposed as Critical Habitat. The proposed rule would implement the protection provided by the Endangered Species Act of 1973, as amended (Act). The Service is also requesting information on environmental and economic impacts that would result from designating Critical Habitat for this species.

DATES: Comments from all interested parties must be received by January 30, 1983. Public hearing requests must be received by January 16, 1984.

ADDRESS: Interested persons or organizations are requested to submit comments to Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rule contact the Endangered Species Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno, Nevada 89502, (702/784–5227) or John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Big Spring spinedace (*Lepidomeda mollispinis pratensis*) is one of seven taxa belonging to the Plagopterini, a unique tribe of cyprinid fishes. The fishes of this tribe are restricted to the lower Colorado River system and are characterized by the possession of two spiny rays in the dorsal fin and reduction in scales in some members (Miller and Hubbs, 1960; Uyeno and Miller, 1973). The Big Spring spinedace is the representative of this tribe within Meadow Valley Wash. During pluvial times, 10,000 to 40,000 years before present, the area referred to as Meadow Valley Wash contained Lake Carpenter and its outflow river, the Carpenter River (Hubbs *et al.*, 1974). The pluvial Carpenter River flowed into the Colorado River by way of the White River. As these pluvial waters dried, the spinedace was restricted to remnant habitats that retained water.

When the Big Spring spinedace was originally described, it was known only from specimens collected in the 1930's from a marshy area adjacent to Big Spring near Panaca, Nevada (Miller and Hubbs, 1960). By the time of the description in 1960, it was believed that the fish was extinct. Agricultural modification of the area as well as the introduction of the exotic mosquitofish, *Gambusia aflinis*, had apparently caused its extinction from the marsh and spring area (Miller, 1961; Miller and Hubbs, 1960).

During 1978, personnel from the Nevada Department of Wildlife discovered a few individuals of this "extinct" subspecies in Condor Canyon, just northeast of Panaca. Condor Canyon is a small area of Meadow Valley Wash with perennially flowing water. Since the discovery of the Condor Canyon population, the fish have been moved above a barrier falls and now occur in most of the available habitat within Condor Canyon (Cal Allen, Nevada Department of Wildlife, pers. comm.; Hardy, 1980a). However, the available habitat within the approximately 4 mile long Condor Canyon is limited. This restricted habitat is threatened by the possible introduction of exotic species and by habitat alteration. The habitat could also be threatened by a major flood (Cal Allen, pers. comm.; Hardy, 1980b) or a severe drought. Renovation of former habitat in areas downstream from the area where it presently occurs could alleviate this threat.

The Big Spring spinedace was included in the Services' Notice of Review of Vertebrate Wildlife published December 30, 1982 (47 FR 58454–58460). The Service received a petition from the Desert Fishes Council on April 12, 1983, to list the Big Spring spinedace. The petition was evaluated and found to present substantial information supporting the petitioned action and a notice of finding to this effect was published on June 14, 1983 (48 FR 27273–27274).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an Endangered or Threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Big Spring spinedace (*Lepidomeda mollispinis pratensis*), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Prior to the mid-1930's, Big Spring flowed unrestricted to the west and south creating a substantial marsh area adjacent to the spring. During the 1930's, spinedace were collected from this marsh and these fish were subsequently described as a new subspecies, *Lepidomeda mollispinsis pratensis* (Miller and Hubbs, 1960). Visits by ichthyologists to the marsh area during 1959 revealed that the spinedace has been eliminated because of diversion of the water for agricultural purposes. Currently, Big Spring flows toward the north in a highly modified system (Cal Allen, Nevada Department of Wildlife, Pers. comm.).

The Big Spring spinedace is presently known from one locality, Meadow Valley Wash in Condor Canyon. This restricted habitat could be easily disrupted by a reduction or alteration in water flow. Activities such as overgrazing, mining of ground water, diversion and channelization of the stream, loss of riparian vegetation, or a combination of these factors could result in the extinction of the Big Spring spinedace.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Not applicable.

E. *Other natural or manmade factors affecting its continued existence.* The introduction of exotic organisms, especially fishes, is detrimental to the Big Spring spinedace. The introduction of mosquitofish (*Gambusia affinis*) into Big Spring contributed to the extirpation of the spinedace at that locality (Miller,

1961; Miller and Hubbs, 1960). The introduction of exotic fishes is usually detrimental to native fishes because of competition, predation, or the introduction of exotic parasites and diseases (Deacon *et al.*, 1964; Hubbs and Deacon, 1964).

Because of the restricted range of the Big Spring spinedace in Condor Canyon, a severe flood could also eliminate spinedace from parts or all of the Canyon habitat (Hardy, 1980b). This problem could be alleviated by renovation of former habitat and reintroduction of the Big Spring spinedace.

Critical Habitat

Critical Habitat as defined by Section 3 of the Act and 50 CFR Part 424 means: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features: (i) Essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act requires that Critical Habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is Endangered or Threatened. Critical Habitat proposed for the Big Spring spinedace is as follows: Lincoln County, Nevada, Condor Canyon; 4 stream miles along Meadow Valley Wash in Condor Canyon.

With respect to the Big Spring spinedace, the area proposed as Critical Habitat satisfies all known criteria for the ecological, behavioral, and physiological requirements of the subspecies. Any activity which would alter the existing chemical and physical characteristics of the acquatic habitat in Meadow Valley Wash could adversely impact the Big Spring spinedace. This includes activities such as increased silt loads from overgrazing or removal of riparian vegetation, lowering of the water table and diversion of water from the main channel of the stream. The introduction of exotic fishes contributed to the decline and ultimately the extirpation of one population of the Big Spring spinedace. Any exotic fishes introducted into the Critical Habitat could bring about the decline of the only remaining population of the Big Spring spinedace. The area proposed includes most of the presently occupied habitat of this subspecies.

Available Conservation Measures

Conservation measures provided to species listed as Endangered or Threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required by Federal agencies and taking and harm prohibitions are discussed in part below:

Subsections 7(a) (2) and (4) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as Endangered or Threatened. Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its Critical Habitat. If an adverse effect is expected, the Federal agency must enter into consultation with the Service. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed Critical Habitat.

Section 4(b)(8) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken or which in turn may be impacted by such designation.

Major physical and chemical alteration of the Critical Habitat could eliminate the Big Spring spinedace. Federally authorized, funded, or carried out activities such as channelization, water diversions, removal of ground water and removal of riparian vegetation could result in significant changes in the environment. Any federally authorized increase in grazing could result in overgrazing and the removal of riparian vegetation. This would result in siltation and reduce the ability of the soil to retain water resulting in lower water levels. Removal of riparian vegetation would also result in higher water temperatures and reduced dissolved oxygen levels.

Regulations already published in Title 50 § 17.31 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions that apply to Threatened species. With respect to the Big Spring spinedace, all prohibitions of the Act, as implemented by 50 CFR 17.31 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regualtions codified at 50 CFR 17.32 provide for the issuance of permits to carry out otherwise prohibited activities involving Threatened species under certain circumstances. Such permits are available for scientific purposes or the enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available. A special rule is proposed for the Big Spring spinedace which would allow take for educational or scientific purposes in accordance with applicable State laws and regulations. Any violation of State law would be a violation of the Endangered Species Act. The special rule allowing take for educational and scientific purposes will allow for a more efficient management of the Big Spring spinedace and result in a more effective conservation of the species. This special rule will allow this fish to be managed as a Threatened species. Without the special rule, all prohibitions of an Endangered species status would apply.

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to the Big Spring spinedace;

(2) The location of any additional populations of the Big Spring spinedace species and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of the Big Spring spinedace;

(4) Current or planned commercial or other activities in the subject area and their possible impacts on the Big Spring spinedace;

(5) Any foreseeable economic and other impacts resulting from determining Critical Habitat.

Final promulgation of the regulations on the Big Spring spinedace will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the U.S. Fish and Wildlife Service, Regional Director (see Addresses section).

National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of Appeals which held that the preparation of NEPA documentation was not required as a matter of law for listings under the Endangered Species Act. *PLF v. Andrus* 657 F. 2d 829 (6th Cir. 1981).

References

The following sources were used in the preparation of this proposed rule:

Deacon, J. E., C. Hubbs, and B. J. Zahurance. 1964. Some effects of introduced fishes on the native fish fauna of southern Nevada. Copeia 1964:384–388.

Hardy, T. 1980a. The inter-basin area report—1978. Proc. Desert Fishes Council 11:5–21.

Hardy, T. 1980b. Interbasin report to the Desert Fishes Council—1979. Proc. Desert Fishes Council 10:68–70..

Hubbs, C. and J.E. Deacon. 1964. Additional introductions of tropical fishes into southern Nevada. Southwestern Nat. 9:249–251.

Hubbs, C.L., R.R. Miller, and L.C. Hubbs. 1974. Hydrographic history and relict fishes of the north-central Great Basin. Memoirs California Acad. Sci. 7:1–259.

Miller, R.R. 1961. Man and the changing fish fauna of the American Southwest. Pap. Michigan Acad. Sci. Arts Letters 46:365–405.

Miller, R.R., and C.L. Hubbs. 1960. The spiny-rayed cyprinid fishes (Plagopterini) of the Colorado River system. Misc. Publ. Mus. Zool., Univ. Michigan 115:1–39.

Uyeno, T., and R.R. Miller. 1973. Chromosomes and the evolution of the plagopterin fishes (Cyprinidae) of the Colorado River system. Copeia 1973:776–782.

Author

The primary author of this rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440–2791).

List of Subject in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h), Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, by adding the following entry alphabetically to the table under the heading "Fishes" as set forth below:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
*	*	*	*	*		*	
Big Spring spinedace	*Lepidomeda mollispinis pratensis*	U.S.A. (NV).	Entire	T		17.95(e)	17.44(h)
*	*	*	*	*		*	

§ 17.44 [Amended]

2. It is further proposed that 50 CFR 17.44 (special rules) be amended by adding a new paragraph (h) as follows:

* * * * *

(h) Big Spring spinedace (*Lepidomeda mollispinis pratensis*).

(1) All provisions of § 17.31 apply to this species, except that they may be taken for educational and scientific purposes in accordance with applicable State laws and regulations.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

* * * * *

3. It is further proposed that 50 CFR § 17.95(e) *Fishes*, be amended by adding Critical Habitat of the Big Spring spinedace after that of the Pupfish, Leon Springs as follows:

* * * * *

Big Spring Spinedace

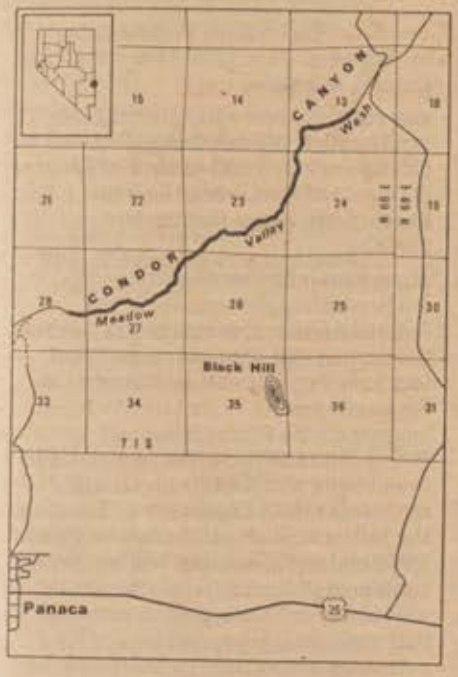
Lepidomeda mollispinis pratensis

Nevada. Lincoln County, Condor Canyon, 4 stream miles of Meadow Valley Wash and 50 feet on either side of the stream as it flows through the following sections: T1S, R68E. Sections 13, 23, 24, 26, 27, and 28. Known constituent elements include clean permanent flowing spring-fed stream with deep pool areas and shallow marshy areas along the shore and the absence of exotic fishes.

* * * * *

BIG SPRING SPINEDACE

Lincoln County, NEVADA



Dated: October 17, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-31850 Filed 11-29-83; 8:45 am]

BILLING CODE 4130-55-M

Notices

Federal Register
Vol. 48, No. 231
Wednesday, November 30, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

November 25, 1983.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

• Economic Research Service
Survey of Special Purpose Regional Organizations. Every 5 years
State of Local Governments, Non-Profit Institutions: 1,422 responses; 711 hours; not applicable under 3504(h)
Norman Reid (202) 447–8874

Revised

• Office of Grants and Program Systems
Research Grant Application Kit
S&E–661; 662, 663, 55 and 84
Annually
Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit
Institutions: 2,000 responses; 12,000 hours; not applicable under 3504(h)
Peggy Terry (202) 475–5050

New

• Foreign Agricultural Service
Emergency Relief From Duty-Free Imports of Perishable Products
On Occasion
Farms and Businesses or Other For-Profit: 7 responses; 126 hours; not applicable under 3504(h)
Gretchen Stanton (202) 382–1336

Larry Roberson,
Acting Department Clearance Officer.

[FR Doc. 83-32051 Filed 11-29-83; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

M. E. Barnes Park Critical Area Treatment and Public Water-Based Recreation RC&D Measure, Michigan; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the M. E. Barnes Park RC&D Measure, Cass County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Office and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of critical area treatment and public water-based recreation measures. The planned works of improvement include the following items: 200 lineal feet of rock rip-rap, site preparation, and 0.5 acres of critical area planting. The public water-based recreation measures include the following items: A footbridge, security lighting, and recreation trails. Total construction cost is estimated to be $14,600; $8,400 RC&D funds and $6,200 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: October 13, 1983.

Homer R. Hilner,

State Conservationist.

[FR Doc. 83-32011 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-16-M

Ottawa County Roadside RC&D Measure, Oklahoma; Finding of No Significant Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ottawa County Roadside RC&D Measure, Ottawa County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624-4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Roland R. Willis, state Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for stabilizing erosion along the county roadside. The planned work of improvement includes a concrete ditch liner.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 21, 1983.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 83-32006 Filed 11-29-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 40201] [1]

Air New England/Mackey International Airlines, Employee Protection Program Investigation; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., November 25, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-32047 Filed 11-29-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38976]

Braniff International Airways, Employee Protection Program Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated at Washington, D.C., November 25, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-32018 Filed 11-29-83; 8:45 am]

BILLING CODE 6320-01-M

[1] With the consolidation of these two investigations into one proceeding, Docket 39783 has been consolidated into Docket 40201. Henceforth, communications regarding either the Air New England or the Mackey International Employee Protection Program Investigations should be filed in Docket 40201.

[Docket 38383]

Pan American World Airways, Employee Protection Program Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated at Washington, D.C. November 25, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-32046 Filed 11-29-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38571]

United Air Lines Employee Protection, Program Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated at Washington, D.C., November 25, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-32049 Filed 11-29-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Annual Demographic Survey (1984)

Form Numbers: Agency—CPS-1, CPS-665; OMB—0607-0354

Type of Request: Reinstatement of a previously approved collection for which approval has expired

Burden: 61,000 respondents; 24,400 reporting hours

Needs and Uses: These data are used to detect shifts in household composition, labor force activity, migration patterns, and income levels

Affected Public: Individuals or households

Frequency: Annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: 1982 Census of Transportation/ 1938 Commidity Transportation Survey
Form Numbers: Agency—TC–9402; OMB—0607–0431
Type of Request: Revision of a currently approved collection
Burden: 75,000 respondents; 179,500 reporting hours
Needs and Uses: These data are needed to measure the volume of industry level shipments moving over the Nation's transportation network. Data are used by government agencies at all levels in the conduct of their regulatory, promotional, and policy-making activities. Data are also used by private organizations for distribution, planning, and marketing research
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: Quinquennially
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Quarterly Financial Report (QFR)
Form Numbers: QFR–101, 102–MG, TR (long form); QFR–101a, QFR–102a–MG, TR (short form) QFR–103, QFR–104—NB–1, NB–2, QFR–106–CS; OMB—0607–0432 0607–0433 0607–0434, 0602–0436
Type of Request: Extension
Burden: 23,400 respondents; 229,600 reporting hours
Needs and Uses: The QFR is the best available source of timely financial data for gauging quarterly performance of the nonregulated, domestic corporate sector. Users include the Department of Commerce (GNP calculation), the Federal Reserve Board, the Council of Economic Advisers, and a host of private sector organizations and individuals
Affected Public: Businesses or other for profit institutions, small businesses or organization
Frequency: One time, quarterly, annually, biennually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of Economic Analysis
Title: Plant and Equipment Expenditures Surveys
Form Numbers: Agency—BE–452 and BE–456; OMB—0608–0006
Type of Request: Revision of a currently approved collection
Burden: 12,500 respondents; 37,000 reporting hours
Needs and Uses: These surveys secure information on capital expenditures and investment plans from U.S. nonfarm businesses. Economic estimates from the surveys are widely recognized as one of the most important economic indicators. These are the only official estimates of investment plans and quarterly investment by industry.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: Quarterly, annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: International Trade Administration
Title: Delivery Verification Certificate
Form Numbers: Agency—ITA–647P; OMB—0625–0063
Type of Request: Extension
Burden: 500 respondents; 125 reporting hours
Needs and Uses: Foreign governments sometimes request U.S. importers of strategic commodities to verify that the commodities shipped to the U.S. were not diverted from their intended destination. This verification procedure increases the effectiveness of controls over exports of strategic materials
Affected Public: Businesses or other for-profit, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Ed Clarke, 395–4814

Agency: International Trade Administration
Title: Overseas Business Interest Questionaire
Form Numbers: Agency ITA–471P; OMB—0625–0039
Type of Request: Extension
Burden: 1,000 respondents; 500 reporting hours
Needs and Uses: This form collects information from firms participating in overseas trade events related to their prospective target audience(s). The information is used by the United States Foreign Commercial Service to arrange business appointments for mission/show participants during scheduled trade promotion events
Affected Public: Businesses or other for-profit, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Ed Clarke, 395–4814

Agency: National Oceanic and Atmospheric Administration
Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish
Form Numbers: Agency—N/A; OMB—0648–0114
Type of Request: Extension
Burden: 315 respondents; 42 reporting hours
Needs and Uses: Data is needed to make assessments of the U.S. fishing industry's intent and capacity to harvest and process fish and shellfish. Results are used to establish allocations of fishery resources among users and in determining impact of management measures
Affected Public: Business and other for-profit, small business or organizatons
Frequency: Semi-annually, annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Ed Clarke, 395–4814

Agency: Office of the Secreary
Title: Monthly Report from Business
Form Numbers: Agency—N/A; OMB—0605–0009
Type of Request: Reinstatement of a previously approved collection for which approval has expired
Burden: 32 respondents; 288 reporting hours
Needs and Uses: Information is used for early judgmental reading of business conditions in key industries
Affected Public: Business or other for-profit
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Ed Clarke, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 83–31980 Filed 11–29–83; 8:45 am]

BILLING CODE 3510–CW–M

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 applications for an Export Trade Certificate of Review. This notice summarizes the conduct for

which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before December 15, 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 83-00030 and/or 83-00031."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mart. 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 meet 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 applications for Export Trade Certificates of Review:

Applicant: TWP Co., Inc. (Trans World Products Co., Inc.), 1776 K Street NW., Suite 507, Washington, D.C. 20006
Application No.: 83-00030
Date Received: November 14, 1983
Date Deemed Submitted: November 17, 1983
Members in Addition to Applicant: None.

A. Export Markets

TWP expects to export its goods and services worldwide, particularly to African countries.

B. Export Trade

TWP will deal in rice, corn, flour, soy bean oil, refined granulated sugar, and other agricultural commodities, pharmaceuticals, newsprint and stationery, automobile tires, aircraft spare parts, floor and ceiling tiles, and computer hardware and software.

In connection with its export of goods, TWA will provide the following services: consultation, feasibility analysis, international market research and development, assistance in soliciting export and import licenses, communication and processing of foreign orders, product adaptation and packaging, product representation and distribution, advertising, transportation, trade documentation, foreign exchange, financing, taking title to goods, and after-sale services.

C. Activities/Methods of Operation

1. Acting as a broker or representative in export-related capacities for U.S. manufacturers and suppliers in foreign, particularly African, markets.

2. Negotiating export agreements with U.S. manufacturers and suppliers and foreign buyers.

3. Establishing and entering into export-related agreements setting such prices, quantities, and terms or conditions of sale or financing as may from time to time be necessary and proper.

4. Buying, selling, trading, and exporting, whether on a continuing, infrequent, or one-time-only basis.

5. Bidding jointly or cooperatively, conducting joint trade promotion activities, and jointly supplying goods and services, whether on a continuing, infrequent, or one-time-only basis, with other U.S. persons or firms on exporting projects.

6. Procuring investments or other financial assistance from bank holding companies, Edge Act or Agreement Act corporations that are subsidiaries of bank holding companies, banker's banks, insurance companies, investment banking houses, and such other persons or entities as may from time to time be willing and able to invest in or offer financial assistance to TWP.

7. Engage in countertrading, bartering, third country trading (i.e., trading between two nations unaffiliated with the U.S.), switch trading (i.e., using a third country's currency in trade between two nations), or any other trading as may be necessary and proper in order to further the export trade activities of TWP.

8. Consulting and exchanging commercial information of a non-confidential nature (i.e., information of a nature permitting ready disclosure or that which is generally available to the public, relating to the exporting of goods or provision of services in connection therewith) with other U.S. and foreign persons or firms in order to ascertain the existence of, prepare bids for, and obtain business from U.S. and foreign persons or firms.

9. Procuring the services of, paying competitive commissions or compensations to, and entering into exclusive agency agreements with foreign persons or firms who act as TWP's agents or otherwise assist it in obtaining business.

10. Acting as an intermediary in negotiating terms and conditions of sale between U.S. sellers and foreign buyers.

11. Entering into such exclusive sales or agency agreements as may from time to time be necessary and proper with either U.S. or foreign persons or firms for goods and services to be exported to foreign markets.

Applicant: Gate Group U.S.A., Inc.
Application No.: 83-00031
Date Received: November 14, 1983
Date Deemed Submitted: November 17, 1983
Members in Addition to Applicant: Isaac M. Savitt, 37 West 12th Street, New York, New York, 10011
Summary of Application: Gate Group U.S.A., Inc., a U.S. export trading company, incorporated in the State of

Florida and located at 2890 N. Andrews Avenue, Ft. Lauderdale, Florida 33311, 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 member intend to market products and services worldwide.

B. Export Trade

The Applicant and its member intend to export products, equipment, and machinery for the graphic arts industry. The Applicant and its member further intend to provide export trade services, including but not limited to consulting, international market research, advertising, marketing, insurance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods.

C. Activities/Methods of Operation

The Applicant and its member intend to enter into exculsive distribution agreements in export trade with U.S. manufacturers of products, equipment, and machinery for the graphic arts industry.

The Applicant and its member further intend to purchase products, equipment, and machinery for the graphic arts industry, for resale wordwide under the Applicant's name. Finally, the Applicant and its member propose to enter into, and from time to time terminate, exclusive and non-exclusive agreements with distributors, agents, and sales representatives located in foreign markets. The foregoing agreements may contain territorial, price, and quantity restrictions.

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 certificates should be issued. Information submitted by any person in connection with these applications will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Dated: November 23, 1983.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 83-31997 11-29-83; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Trade Development Corporation of Chicago (TDCC). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. 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 the certificates as "Export Trade Certificate of Review, application number 83-00012."

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 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-604 (March 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 government criminal and civil suits under federal and state antitrust laws for the export conduct 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 15937-40 (April 13, 1983).

Description of Certified Conduct

Export Trade

(a) Phonograph records and pre-recorded tapes; used airliners and surplus aircraft equipment; screws, bolts and nuts; and computer software (including computer games) ("Products and Services");

(b) Consulting services to facilitate the export of any product for Suppliers who operating in or entering the Export Markets. Such services are limited to the development of selling strategies for Asian markets, the performance of product demand surveys and marketing studies of Asian markets, and the performance of technical assistance studies financed by the Asian Development Bank ("Asian Market Consulting Services").

Export Markets

Asia (including Japan, Korea, Taiwan, Thailand, Malaysia, China, Hong Kong, Singapore, Indonesia, the Philippines, Australia, New Zealand, Oceania).

Export Trade Activities and Methods of Operation

(a) To enter into any number of nonexclusive agreements with Suppliers or buyers in the Export Markets to act as a Sales Representative or Broker. TDCC may enter into such agreements with Suppliers regardless of whether the Suppliers produce or sell similar or substitutable Products and Services.

(b) To enter into agreements with Suppliers (regardless of whether they produce or sell similar or substitutable Products and Services) wherein:

(1) TDCC agrees to serve as the exclusive Sales Representative and, in addition, may agree not to represent any competitors of such Supplier unless authorized by Supplier; or

(2) the Supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which TDCC exclusively represents the Supplier and, if such sales do occur, to pay a commission to TDCC; or

(3) both (1) and (2) above.

(C) To enter into nonexclusive agreements appointing distributors or sales or marketing agents for Products and Services in the Export Markets.

(d) To enter into exclusive agreements with persons in the Export Markets (including distributors and sales or marketing agents), wherein (1) TDCC agrees to deal in Products and Services in the Export Markets only through that person, or (2) that person agrees not to represent TDCC's competitors in the Export Markets or not to buy from TDCC's competitors, or both (1) and (2).

(e) For TDCC itself or on behalf of individual Suppliers, to engage in any or all of the following activities as part of or in conjunction with or independent of Export Trade Services:

(1) To establish prices at which Products and Services will be sold in the Export Markets,

(2) to establish quantities of Products and Services to be sold in the Export Markets, or

(3) to allocate the foreign markets, territories or customers among its agents or distributors, or among such Suppliers of Products and Services and their distributors or agents.

TDCC may engage in the above activities by agreements with its distributors or agents in the Export Markets, with individual Suppliers (regardless of whether they produce or sell similar or substitutable Products and Services) or with their distributors or agents in the Export Markets, or on the basis of its own determination.

(f) To enter into exclusive or nonexclusive agreements with an individual buyer in the Export Markets to act as a Purchasing Agent with respect to a particular transaction.

(g) To advise Suppliers of Products and Services of relevant market facts concerning the Export Markets in order to assist them in planning sales strategies and making sales in the Export Markets, subject to paragraph (a) under "Terms and Conditions of Certificate."

(h) To disclose information resulting from Asian Market Consulting Services to Suppliers of any product for the Export Markets, regardless of whether the Suppliers produce or sell similar of substitutable goods or services, subject to paragraph (a) under "Terms and Conditions of Certificate."

Terms and Conditions of Certificate

(a) TDCC will not intentionally disclose, directly or indirectly, to any Supplier or prospective Supplier any business information obtained from any other Supplier of similar or substitutable Products and Services, unless such business information is already generally available to the trade or public. For purposes of this certificate, business information means any information about costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, U.S. business plans, strategies or methods, or any other commercial, financial or industry information that is not materially related to the conduct of the export business of the Supplier through TDCC.

Definitions

For purposes of this certificate, the following terms are defined:

(1) "Broker"—an intermediary who locates buyers of Products and Services in the Export Markets for Suppliers or who locates Suppliers of Products and Services for buyers in the Export Markets on a straight commission or cost-plus commission basis and who, in so acting, offers, provides or engages in some or all Export Trade Services.

(2) "Export Trade Services"—consulting, international market research, advertising, marketing, insurance, product research and design exclusively for export, transportation, trade documentation and freight forwarding, communication, processing foreign orders, foreign exchange, financing, taking title to goods, buying and selling for export, and appointing distributors or sales or marketing agents in the Export Markets.

(3) "Purchasing Agent"—an intermediary who identifies and locates Product and Services for purchase, gives advice on or chooses among prospective Suppliers, advises on or negotiates prices, quantities and other purchase terms and conditions, and purchases Products and Services for its own account or for the account of others and who, in so acting, offers, provides or engages in some or all Export Trade Services.

(4) "Sales Representative"—an intermediary who represents a Supplier of Products and Services in the Export Markets and who, in so acting, offers, provides or engages in some or all Export Trade Services.

(5) "Supplier"—a U.S. manufacturer or supplier, its parent or its subsidiary.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR § 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of the certificates will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulation published in 15 CFR pt. 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Dated: November 23, 1983.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 83-31998 Filed 11-29-83; 8:45 am]

BILLING CODE 3510-DR-M

[C-351-062]

Pig Iron From Brazil; Preliminary Results of Administration Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on pig iron from Brazil. The review covers the period January 1, 1981 through December 31, 1981.

As a result of the review, the Department has preliminarily determined the aggregate net subsidy for the period to be 9.36 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 2, 1983.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 31280) the final results of its last administrative review of the countervailing duty order on pig iron from Brazil (45 FR 23045, April 4, 1980) and announced its intent to conduct the next review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Brazilian pig iron of basic, foundry, malleable, and low phosphorous grades. Such merchandise is currently classifiable under item 606.1300 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981 and ten programs: (1) Preferential financing for exports; (2) income tax exemptions for export earnings; (3) the export credit premium for the Industrial Products Tax ("IPI"); (4) preferential financing under CIC-CREGE 14-11; (5) partially-indexed long-term loans; (6) Fundo de Democratizacao do Capital das Empresas ("FUNDECE"); (7) fiscal benefits for special export programs; (8) tax reductions on equipment used in export production ("CIEX"); (9) incentives for trading companies (Resolution 643); and (10) preferential financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Programs

(1) Preferential Financing for Exports

Under this program, the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX") declares companies eligible to receive working capital loans at preferential rates. These loans have a duration of up to one year. During the period of review, each firm producing pig iron could obtain preferential financing for up to 20 percent of the value of its previous year's exports.

We calculated the subsidy under this program by multiplying the principal outstanding under this program during 1981 by the differential between the commercial interest rate and the preferential interest rate for each loan. For loans granted prior to the period, we included only that portion extending past January 1, 1981 in our calculation. We similarly prorated loans extending past December 31, 1981.

The commercial rate for short term working capital is the rate established by the Banco do Brasil for discounting sales of accounts receivable. We chose this as the benchmark rate because information provided by the Government of Brazil indicates that working capital is normally raised within the Brazilian financial system through the sale of accounts receivable. The commercial rate includes the tax on financial transactions ("the IOF"), from which loans under the preferential program are exempt; the rate varied from 33.48 percent to 66.50 percent during the period January 15, 1980 through December 31, 1981.

During 1981, the eight companies covered by this review had loans outstanding under Resolutions 583 (effective December 7, 1979), 602 (effective March 5, 1980), and 674 (effective January 22, 1981) of the Banco Central do Brasil. The effective annual rate for loans granted under these resolutions ranged from 26.39 percent to 44 percent and the differential between the commercial and preferential rates ranged from 7.09 percent to 22.50 percent. We calculated the benefit conferred by the program for 1981 to be 3.78 percent *ad valorem*.

On February 21, 1983, the Government of Brazil reduced the maximum eligibility for preferential financing under Resolution 674 from 20 percent of the previous year's exports to 15 percent. Effective January 3, 1983, the Banco do Brasil increased its discount rate to 72 percent. In addition, the Government of Brazil increased the effective preferential interest rate for export financing from 44 percent to 69 percent and lowered the IOF from 4.50 percent to 1.50 percent on June 10, 1983 (Resolutions 832 and 830, respectively). Adding the 1.50 percent IOF to the 72 percent rate for discounting accounts receivable, the adjusted benchmark commercial interest rate is 73.50 percent. As a result, the differential between the commercial benchmark rate and the preferential interest rate is 4.50 percent.

To estimate the potential benefit and cash deposit of estimated countervailing duties for this program, we summed the prorated value of loans outstanding during 1981, and found a weighted average use rate of 27.91 percent. Since this rate is greater than the reduced maximum eligibility rate, we used the new maximum eligibility rate of 15 percent to calculate the potential benefit. We multiplied the current 4.50 percent interest rate differential by 15 percent to find a potential benefit under this program of 0.68 percent *ad valorem*.

(2) Income Tax Exemptions for Export Earnings

Exporters of pig iron are eligible under this program for exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount of tax-exempt profit and the prevailing 35 percent corporate income tax rate. We preliminarily determine the benefit from this program to be 2.76 percent *ad valorem* for 1981.

(3) IPI Export Credit Premium

Exports of pig iron are eligible for the maximum IPI export credit premium. A percentage of the f.o.b. invoice price of the exported merchandise is reimbursed in cash to exporters through the bank involved in the export transaction. The Brazilian government eliminated the IPI export credit premium on December 7, 1979, but reinstated it on April 1, 1981.

Since June 26, 1981, the Brazilian government has been collecting an export tax on exports of pig iron to the U.S. (Resolution 699), completely offsetting the benefit received under this program. Therefore, pig iron exporters received a benefit under this program for three months during 1981. We divided the value of IPI credits received during that period by 1981 exports and found an *ad valorem* benefit in 1981 of 1.61 percent. Currently, the tax collected on exports of pig iron to the U.S. continues to fully offset the benefit received under this program. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential subsidy under this program is zero percent.

(4) Preferential Export Financing Under CIC-CREGE 14-11

CIC-CREGE 14-11 is a program operated by the Banco do Brasil that provides preferential financing to exporters, who are then required to maintain a minimum fixed level of foreign exchange contracts with the Banco do Brasil. Exporters of pig iron participated in this program in 1981.

To calculate the amount of benefit conferred under the program, we multiplied the prorated principal outstanding during 1981 of each loan by the differential between the commercial rate and the preferential interest rate on each loan. Using the preferential rate for

each loan (provided by the Brazilian government) and again using the rate for discounting accounts receivable as the commercial rate, we found that the differential between the commercial and preferential rates ranged from 6.98 to 11.50 percent. We preliminarily determine the benefit conferred by the program to be 0.24 percent *ad valorem*.

(5) Partially-Indexed Long-Term Loans

Producers of pig iron are eligible for loans from the National Bank for Economic Development ("BNDE") and FINAME, a program of BNDE for the purchase of capital equipment manufactured in Brazil. Generally, these loans are fully indexed to the inflation rate in Brazil and are made at fixed real interest rates. The index used for these loans is the ratio established for the Readjustable Bonds of the National Treasury ("ORTN"). Principal and payments are calculated in ORTNs, and are converted at the current ORTN-cruzeiro exchange rate.

Under a program no longer in operation, BNDE granted loans, some through FINAME, that are adjusted at only 20 percent of the variation in ORTN each year. When a fully-indexed loan is granted, the ORTN balance is calculated at the ORTN-cruzeiro exchange rate prevailing at the time the loan is granted. This ORTN balance remains constant while the cruzeiro balance fluctuates with the changes in the ORTN-cruzeiro exchange rate. With the partially-indexed loans this procedure applies only until the cruzeiro balance has increased 20 in any given year. At that point the cruzeiro blance is held constant and the ORTN balance is adjusted by the fluctuations in the exchange rate. At the beginning of each year the process is repeated for each outstanding loan. All payments are calculated at the ORTN-cruzeiro exchange rate prevailing on the day the payment is made. Because of the 20 percent cap the principal decreases in real terms, and thus the interest paid by the loan recipient is also less than it would be with a fully indexed loan.

One company covered by this review had a partially-indexed loan with an outstanding balance during 1981. This company went through a bankruptcy reorganization in 1981 and made no payments, principal or interest, during the review period. We have no information on whether principal and interest payments were resumed after 1981, nor have we information on whether such a practice is normal procedure for a Brazilian bankruptcy reorganization. Therefore, we used the best evidence otherwise available.

To calculate the benefit we treated the suspension of repayment in 1981 as a one year loan holiday and expensed it in 1981. The terms of the loan called for thirty-two quarterly constant principal payments at an annual interest rate of 5 percent. Three payments were made in 1980. We calculated the quarterly payments, in ORTN's, that would have been made in 1981 on a fully-indexed loan for the same amount. We converted these amounts into cruzeiros at the ORTN-cruzeiro exchange rate prevailing on the date the payment was due. We totaled the four amounts and divided by total sales for that company. We then weighted this by the company's share of exports to the U.S. to find an *ad valorem* benefit of 0.97 percent.

(6) Fundo De Democratizacao do Capital das Empresas

This program, which provided Brazilian companies with export financing, was funded by the U.S. government through the Alliance for Progress. Under section 701(a) of the Tariff Act, the Department must determine whether "a country under the Agreement" or "a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country" is providing a subsidy with respect to a class or kind of merchandise. The United States, however, is not a "country under the Agreement", as defined by section 701(b). Therefore, the program is not countervailable.

(7) Other Programs

We also examined the following programs and preliminarily find that exporters of pig iron did not use them during 1981.

A. Fiscal Benefits for Special Export Programs ("BEFIEX").

B. Tax Reductions on Equipment Used in Export Production ("CIEX").

C. Incentives for Trading Companies (Resolution 643).

D. Preferential Financing for the Storage of Merchandise Destined for Export (Resolution 330).

Preliminary Results of Review

As a result of the review, we preliminarily determine the aggregate net subsidy to be 9.36 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 9.36 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1981 and on or before December 31, 1981.

Because of the changes in these programs described above, we preliminarily determine the potential subsidy, for purposes of the cash deposit of estimated countervailing duties, to be 4.65 percent.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.65 percent of the f.o.b. invoice price on all shipments of Brazilian pig iron entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: November 23, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-32052 Filed 11-29-83; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Agenda Amendment

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: The agenda as published in the **Federal Register** (November 21, 1983, 48 FR 52621), for public meetings (November 5–8, 1983, Anchorage, Alaska), of the North Pacific Fishery Management Council, its Scientific and Statistical Committee, its Advisory Panel, etc., has been changed to include the following items.

The new agenda items include a decision by the Council on long-term plans for halibut management, a

revision of the halibut catch limit provisions in the Gulf of Alaska Groundfish Fishery Management Plan to enable the winter/spring Shelikof Strait pollock fishery to proceed in 1984, and discussion of prohibited species by catches in the Bering Sea Aleutian groundfish plan area with particular reference to U.S. trawling in the Bristol Bay Pot Sanctuary.

In addition, the Council's Permit Review Committee and Joint Venture Policy Committee will meet at 1 p.m., on December 5, 1983, in the Old Federal Building. The Committees will review joint venture and foreign fishing permit applications for 1984 and discuss methods for reducing incidental catches of prohibited species in trawl operations by U.S. trawlers.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

Dated: November 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-32045 Filed 11-29-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council, Public Meeting With a Partially Closed Session and Public Meeting of its Salmon Plan Development Team

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting with a partially closed session.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming separate public meetings of the Pacific Fishery Management Council, and its Salmon Plan Development Team (SPDT). The Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94-265, as amended), and the Council has established a Scientific and Statistical Committee (SSC), planning teams, advisors, and committees to assist the Council in carrying out its responsibilities.

DATES: December 13-14, 1983.

ADDRESS: The Council meeting will take place at the Sheraton Airport Hotel, Portland, Oregon on December 14, 1983. The SPDT will meet on December 13, 1983 in the Chinook Room of the Oregon Department of Fish and Wildlife, 506 SW. Mill St., Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill St., Second Floor, Portland, Oregon 97201. Telephone: (503) 221-6352.

Agendas: Council (open session)—December 14, 1983 (10 a.m. to 5 p.m.) in the Columbian Rooms A and B. Consider recommendations of its SSC, SPDT, Salmon Advisory Subpanel, and the public on the draft proposed Famework Amendment to the FMP for the Commercial and Recreational Salmon Fisheries off the coasts of Washington, Oregon, and California.

Also to be addressed are matters relating to establishing incidental catch levels for jack mackerel and Pacific mackerel in a proposed joint venture fishery south of 39° N. latitude, and separate management of northern jack mackerel. These issue had been deferred at Council's November meeting.

Written comments on incidental catches in the joint venture whiting fishery and separate management for jack mackerel are invited through December 13, 1983. The period for written comments on the Framework Amendment ended on November 10, 1983. Individuals or organizations desiring to provide advice in person may do so during the scheduled public comment period at 10 a.m.

Council (closed session)—December 14, 1983 (12 noon to 1:00 p.m.) in the Columbian Rooms A and B. Discuss the status of the fishery negotiations between the U.S. and Canada and the status of current litigation. Only those Council members and staff having security clearances will be allowed to attend this closed session. Personnel matters will also be discussed.

Salmon Plan Development Team (open session)—December 13, 1983 to examine allocation goals and the schedule for in-season actions. Time for public comments is set for 3 p.m. Members of the public will be permitted to submit oral or written statements regarding these matters.

Dated: November 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-32044 Filed 11-29-83; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 83-4]

Bilt-Rite Juvenile Products, Inc., et al.

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of prehearing conference.

Bilt-Rite Juvenile Products, Inc., a corporation; Century Products, Inc., a corporation; Collier-Keyworth Co., Inc., a corporation; Cosco, Inc., a corporation; Graco Metal Products, Inc., a corporation; Pride-Trimble Corporation, a corporation; Questor Corporation, a corporation; Strolee of California, aka California Strolee, Inc., a corporation; and Welsh Company, Inc., a corporation.

DATE: This notice announces a prehearing conference to be held in the matter of Bilt-Rite Juvenile Products, Inc., et al [1] on December 13, 1983 at 11:00 a.m.

ADDRESS: The prehearing conference will be in the Hearing Room #LL3 (Lower Level), the Gelman Building, 2120 L Street, NW., Washington, D.C. For additional information contact: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6800.

Notice of Prehearing Conference

Please take notice that a prehearing conference in this proceeding will be held at 11:00 a.m., on December 13, 1983, in the Hearing Room #LL3 (Lower Level), the Gelman Building, 2120 L Street, NW., Washington, D.C. for the purposes outlined in 16 CFR 1025.21(a). The Presiding Officer will be Administrative Law Judge Miles J. Brown. The following issues will be discussed:

1. Establishment of a time schedule for the completion of formal discovery.

2. Establishment of a time schedule for the exchange of final witness lists, prepared testimony and documents, including proposed exhibits;

3. Scheduling the date, time and place of the adjudicative hearing;

4. Such further matters that may be raised by the parties.

[1] Editorial Note: See 48 FR 44605, Sept. 29, 1983, for a notice of complaint under the Consumer Product Safety Act in Docket No. 83-4 and 48 FR 49331, Oct. 25, 1983 for a correction to the notice of complaint.

Dated: November 23, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-31974 Filed 11-29-83; 8:45 am]

BILLING CODE 6355-01-M

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a collection of information consisting of two forms on chemicals in school labs.

The purpose of the forms is to evaluate the effectiveness of a new Commission publication on hazardous chemicals in school laboratories. The information received will show what chemicals have been removed from such labs and measure the awareness among science teachers of hazardous chemicals.

The forms will be provided to teachers, through September 30, 1984, with a document that warns of the hazardous chemicals in school labls.

Information about the Proposed Collection of Information:

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Titles of information collection: "List of Hazardous Substances To be Removed from Schools" and "Evaluation Form."

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: High school science teachers.

Estimated number of respondents: 1,000.

Estimated average number of hours per response: ⅙ (10 minutes).

Comments: Comments on this proposed collection of information should be addressed to Gwen Pla, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, telephone: (202) 395-7313. Copies of the proposed collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207, telephone: (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: November 23, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-32017 Filed 11-29-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the DOD-University Forum

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the DoD-University Forum 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 forum will enable DoD and the universities to address together the range of mutual concerns and opportunities that will shape future research and education programs of importance to national defense.

Membership of the Forum will be drawn equally from DoD and the University community. This will ensure of that membership is balanced in terms of the functions to be performed.

M.S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

November 25, 1983.

[FR Doc. 83-32204 Filed 11-29-83; 8:45 am]

BILLING CODE 3810-01-M

Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Construction of a New Lock at Sault Ste. Marie, Mich. Under the Proposed Great Lakes Connecting Channels and Harbors Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. Proposed Actions

Preliminary feasibility analysis of 18 different plans reviewed as part of the Great Lakes Connecting Channels and Harbors Study resulted in the elimination of plans that lacked economic feasibility. The plan which would provide the greatest net economic benefits includes a combination of improved traffic control and construction of a new large lock designed for the safe and efficient handling of vessels up to 1,014 feet long and 105 feet wide in the St. Marys River at Sault Ste. Marie, Michigan. This lock would replace the Sabin and Davis Locks, two of the four existing U.S. locks at the St. Marys River rapids.

2. Alternatives

The only reasonable alternative to the construction of a new large lock at Sault Ste. Marie, Michigan, is continued operation of the existing facilities. Under this alternative the Poe and MacArthur Locks would continue current operations. The Sabin and/or Davis Locks would be either rehabilitated or closed depending on the outcome of economic feasibility reports now in progress. Under this plan, constraints on shipping would either continue as they are or become greater depending upon the actions taken at the Sabin and Davis facilities.

Other plans which were considered but did not warrant detailed evaluation will be discussed briefly in the DEIS. Alternative disposal sites for dredged materials generated under the proposed plan will also be examined.

3. Scoping Process

a. Public workshops were held in Cleveland, Ohio; Duluth, Minnesota; and Sault Ste. Marie, Michigan, during August of 1982 to inform the public of the status of the project and to encourage public participation in the study. Coordination with Federal, State and local officials is being maintained through a series of meetings and mailings.

b. Significant issues to be addressed in the DEIS include the impacts of construction, and the disposal of materials removed from the old locks and the approach channels.

c. Other Environmental Review and Consultation Requirements—This project will be reviewed for compliance with the following:

Fish and Wildlife Act of 1956;
Fish and Wildlife Coordination Act of 1958;
National Historic Preservation Act of 1966;
National Environmental Policy Act of 1976;
Endangered Species Act of 1973;
Water Resources Development Act of 1976;
Executive Order 11990, Wetlands Protection, May 1977;
Executive Order 11988, Floodplain Management, May 1977;,
Clean Air Act of 1977;

Clean Water Act of 1977;
Corps of Engineers, Department of the Army, 33 CFR Part 230, Environmental Quality;
Corps of Engineers, Department of the Army, Policy and Procedures for Implementing NEPA (ER 200–2–2).

4. Estimated Date of DEIS Release

It is anticipated that the DEIS will be available to the public in June 1984.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. Jim Galloway, Environmental Analysis Branch, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231.

Dated: November 21, 1983.

Raymond T. Beurket, Jr.,

Colonel, Corps of Engineers, Commanding.

[FR Doc. 83-32013 Filed 11-29-83; 8:45 am]

BILLING CODE 3710-GA-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday & Friday, 15&16 December 1983.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army's LHX aircraft Program will hold its first meeting on the above-named dates. The subgroup is tasked with a comprehensive review of LHX requirements, technology, and specific critical issues impacting on program development. Classified briefings and discussions will cover a review of the LHX Program and identification of major issues. The group will also confirm study group tasking, plans, and schedule. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695–3039 or 697–9703.

Maria P. Winters,

Acting Administrative Officer.

[FR Doc. 83-31943 Filed 11-29-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday & Friday, 22&23 December 1983.

Times: 0830–1700 hours (Closed).

Place: U.S. Army Aviation Systems Command, St. Louis, Missouri.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army's LHX Aircraft Program will meet for classified briefings and discussions on the following: review of technologies related to issues and related technical/management activities; assess influence of other factors, such as engine sizing schedule, aircraft weight, etc. The subgroup is tasked with a comprehensive review of LHX requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695–3039 or 697–9703.

Maria P. Winters,

Acting Administrative Officer.

[FR Doc. 83-31945 Filed 11-29-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board, Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday & Friday, 5&6 January 1984.

Times: 0830–1700 hours (Closed).

Place: U.S. Army Aviation Center, Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army's LHX Aircraft Program will meet for classified briefings and discussions reviewing operational considerations as related to the issues of the study effort, i.e., assessment of speed, crew size, etc. The subgroup is tasked with a comprehensive review of LHX requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695–3039 or 697–9703.

Maria P. Winters,

Acting Administrative Officer.

[FR Doc. 83-31946 Filed 11-29-83; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Industrial Energy Conservation Information and Training; Solicitation for Grant Application

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation for a grant application.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), eligibility for a grant to develop a set of industrial energy conservation information and training products for industry and the consulting engineering profession has been restricted to the American Consulting Engineers Council Research and Management Foundation. The Foundation has been asked to submit an application which is expected to result in the award of a grant of approximately $229,000 or about 65% of the total cost of the project.

Background

The Department of Energy has for several years sponsored the Energy Analysis and Diagnostic Center Program which provides specialized technical assistance on energy conservation technologies and management techniques for small and mid-size industrial firms. The program is highly successful in those firms it has reached, but there is a need to make generally applicable findings broadly available. The American Consulting Engineers Council (ACEC) Research and Management Foundation is a non-profit institution which brings unique assets to the project. ACEC membership includes 3900 firms with 70% of U.S. consulting engineering billings. The ACEC has access to large numbers of highly qualified technical personnel, can effectively and authoritatively disseminate project results to their membership, and through the membership to the small and mid-size industrial firms. Therefore DOE has determined that it is appropriate to restrict eligibility in its solicitation.

Solicitation number: DE–RP01–84CE40561.

Scope of project: The Foundation will develop a series of guidebooks, brochures and audiovisual materials, based on results from the Energy Analysis and Diagnostic Center

Program, which describe the best approaches for industry to implement energy conservation programs, appropriate decision-making processes, successful technologies and techniques, and costs and benefits which may be expected to accrue.

FOR FURTHER INFORMATION CONTACT:
Richard Lewis, MA–453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–1565.

Issued in Washington, D.C., on November 23, 1983.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 83-31981 Filed 11-29-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

[6450-01]

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of responsdents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Wednesday, October 27, 1983.

FOR FURTHER INFORMATION CONTACT:
John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2308
Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7340
Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents amy be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., November 25, 1983.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-97	Boiler order report	Extension	Quarterly	Mandatory	Boiler manufacturing companies, their foreign affiliates and subsidiaries, and boiler rental/leading companies.	25	50	Form EIA-97 collects data on the function, capacity, fuels, delivery dates, and purchasing/operating companies for boilers having a rated capacity of 40,000 or more pounds of steam per hour. The data are used in Energy Information Administration models and in survey frame maintenance.

[FR Doc. 83-33054 Filed 11-29-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-95-000]

Arizona Public Service Company; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 14, 1983, Arizona Public Service Company (Arizona) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 85 between Arizona and Utah Power and Light Company (Utah).

Arizona states that this filing is made in accordance with the terms of the Agreement which provided for a termination date of May 31, 1983.

Arizona requests an effective date of May 31, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32023 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-765-000]

Carolina Power & Light Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motions for Rejection and Summary Disposition, Summarily Disposing of One Issue, and Establishing Hearing and Price Squeeze Procedures

Issued: November 25, 1983.

On September 26, 1983, Carolina Power & Light Company (CP&L) tendered for filing a proposed two-step increase in its rates for full and partial requirements service to 23 wholesale customers.[1] The proposed Phase I rates would increase revenues by approximately $19 million (9%), based on the calendar year 1984 test period. The Phase II rates would further increase revenues by $11.7 million, representing a total increase of $30.7 million (14.5%). Both steps of the proposed increase reflect the inclusion in rate base of approximately 3% of CP&L's construction work in progress (CWIP) other than CWIP associated with pollution control and fuel conversion facilities. The CWIP-based portion of the rates represents an increase of approximately $12.7 million or 5.99% of the aggregate wholesale revenues under the rate schedules being superseded. CP&L requests effective dates of November 26, 1983, and November 27, 1983, for the Phase I and Phase II rates, respectively. However, the company states that it would not contest a five month suspension of the Phase II rates in the event that the Phase I rates are suspended for only one day.

Notice of the filing was published in the **Federal Register**, with comments due on or before October 19, 1983. Timely motions to intervene were filed by the North Carolina Electric Membership Corporation and Brunswick Electric Membership Corporation (Cooperatives); Fred M. Ogburn, III, and Peggy R. Ogburn for the Kershaw County Safe Energy Project (the Ogburns); the North Carolina Eastern Municipal Power Agency (Power Agency); the cities of Bennettsville and Camden, South Carolina, and the French Broad Electric Membership Corporation (Cities); and the City of Fayetteville, North Carolina (Fayetteville).[2]

On October 25, 1983, AGA Gas, Inc. (AGA) filed a motion for late intervention.[3] CP&L opposed this motion to intervene in an answer filed on November 17,[4] and also opposed the Ogburns' intervention in a November 18 answer.

The Cooperatives request that both steps of the proposed increase be suspended for five months based on a number of cost of service objections.[5] In addition, Cooperatives allege price squeeze. Asserting severe potential harm and citing *FPC* v. *Conway Corp.*, 510 F.2d 1264 (D.C. Cir. 1975), *aff'd*, 426 U.S. 271 (1976), the Cooperatives request that the Commission phase the hearing so that the price squeeze question may be decided prior to resolution of the cost of service issues.

The Ogburns request a five month suspension of CP&L's proposed rates [6] and a local hearing. The Power Agency protests the increased depreciation rates reflected in CP&L's filing and indicates that these depreciation rates will affect charges to its members under formula rates contained in their coordination agreement with CP&L.

The Cities move for rejection of CP&L's filing or for the issuance of a deficiency letter, based on the company's purported failure to provide adequate cost support for each phase of its rate increase. According to the Cities, in the absence of such support, it is impossible to verify the company's compliance with the Commission's requirements regarding a 6% maximum CWIP-related increase. As an alternative to rejection, the Cities request: (1) summary disposition as to CP&L's inclusion of amortization costs for cancelled plant in its cash working capital calculation; and (2) a maximum suspension of both steps of the rate increase, based on numerous cost of service issues.[7] The Cities also protest CP&L's rate increase, citing the company's alleged history of inefficiencies in operating its nuclear generating units, which has caused both the North Carolina Utilities Commission and the Nuclear Regulatory Commission to impose sanctions against CP&L. The intervenors suggest that some type of "incentive rate of return" rider may be appropriate in light of this history. Finally, the Cities allege price squeeze. On its own behalf, the French Broad Electric Membership Corporation (FBEMC) seeks the right to raise issues with respect to the level and design of CP&L's partial requirements rates, averring that it is actively planning hydroelectric development and may

[1] *See* Attachmnent for rate schedule designations and affected customers.

[2] On October 25, 1983, in response to a motion by Fayetteville, a notice was issued granting a one day extension of time and accepting for filing Fayetteville's October 20, 1983 protest and motion to intervene.

[3] On November 2, 1983, AGA filed an addendum which included a transmittal letter and certificate of service related to its motion. AGA states that it is currently constructing an energy-intensive industrial facility within the service area of one of CP&L's wholesale cooperative customers, which AGA expects to become operational on or about January 1, 1984. AGA further avers that, inasmuch as it is not a current customer of either CP&L or the cooperative, it did not receive notice of CP&L's filing until after the comment date and that it submitted its motion as soon as possible after having received such notice.

[4] The company contends that it was not served with a copy of AGA's pleading until November 2, 1983. According to CP&L, AGA has not demonstrated that the delay in filing its intervention was justified or that its interests cannot be adequately represented by other parties to the proceeding. CP&L further states that is is unable to discern from AGA's pleading whether the intervention would delay this proceeding or adversely affect other parties.

[5] In support of their request for a five month suspension, the Cooperatives cite issues including: the claimed rate of return on common equity; the amortization period applied to project cancellation costs; the cost of service treatment of gains realized from the sale of interests in generating units; the treatment of operating reserves for rate base purposes; and alleged mismanagement by CP&L of nuclear generating plants. Additional issues raised by the Cooperatives include: CP&L's cost of service inclusion of EPRI, NRRI, NC Energy, and EEI expenses; the alleged inclusion of an amount for CWIP which exceeds the 6% limit on the increase applied to the cooperative class; purportedly excessive allowances for nuclear plant decommissioning expense, cash working capital, coal inventory, regulatory expense, governmental services, and transmission supervision and engineering expenses; functionalization of materials and supplies; inclusion of amounts for general and EEI advertising and industry association dues and memberships; and a purported overstatement of class demand and energy projections.

[6] With respect to their motion for a maximum suspension, the Ogburns contend that the proposed rate of return on equity is excessive, that customers should not be required to pay for plant facilities through CWIP until such facilities are in service, that an increase is inappropriate in light of CP&L's nuclear plant management inefficiencies, and that CP&L's recent financial record does not indicate the need for a rate increase at this time.

[7] The issues include: stated fuel inventories; functionalization of materials and supplies in rate base and of Account 282; allowances for cash working capital, components of operation and maintenance expenses, administrative and general expenses (including EPRI, NRRI, NC Energy, EEI, general advertising, and membership dues), and Federal income tax expense (associated with CWIP-related short-term debt interest deductions); the amortization period for plant cancellation costs; depreciation rates and nuclear decommissioning costs; the treatment of gains realized on the sale of generating facilities; return on equity; treatment of short-term debt in the capital structure; and stated demand and energy projections.

therefore be subject to CP&L's partial requirements rates at some future time.

Fayetteville is CP&L's only current partial requirements customer. Citing several adjustments to CP&L's cost of service,[8] Fayetteville requests that both phases of the partial requirements rate increase be suspended for five months.[9] In addition, Fayetteville protests CP&L's proposed application of a 95% demand ratchet, instead of the 80% ratchet currently incorporated in the partial requirements rates. Fayetteville asserts that implementation of this provision, even on an interim basis, will irreversibly affect its daily operating decisions concerning self-generation, and therefore requests that the Commission disallow this modification in the event that the proposed partial requirements rates are suspended for less than five months. Finally, Fayetteville contends that the company's proposed three year notice provision for termination of partial requirements service is unjust, unreasonable, and unduly discriminatory.

CP&L separately responded to the pleadings of the Cooperatives, the Power Agency, the Cities, and Fayetteville. While not objecting to the interventions or requests for hearing, CP&L opposes the requests for rejection or summary disposition and denies all allegations relating to the requests for maximum suspension. With regard to procedural issues raised in the motions to intervene, CP&L opposes the Cooperatives' request to determine the price squeeze question before the cost of service issues, and challenges FBEMC's right to contest the proposed partial requirements rate schedules under which FBEMC receives no service.

[8] The adjustments include: a reduction in the rate of return for common equity; crediting of the gains on sales of facilities to the wholesale customers; deduction from rate base of deferred taxes associated with the sale of facilities; reduction of nuclear decommissioning expense; an increase in the amortization period for project cancellation costs; elimination of certain cancellation costs already fully amortized on CP&L's books; reductions in cash working capital, fuel stock, and certain administrative and general expenses; elimination of costs related to EPRI, NRRI, EEI, and NC Energy contributions; amortization of rate case expenses; and crediting the full annual facilities charge to Fayetteville. Fayetteville also raises the issue of CP&L's inefficiency in nuclear plant management and suggests an adjustment to the allowed return on equity as a posible response to that problem.

[9] Fayetteville asserts that the proposed rate increase should be aggregated for purposes of the Commission's suspension analysis and that the phasing of the increase is without justification and merely circumvents the intent of the Federal Power Act [FPA]. The Commission has held that neither the FPA nor the Commission's regulations prohibit two-step increases and we have previously allowed such filings. *See, e.g., Cincinnati Gas & Electric Company*, 20 FERC ¶ 61,148 (1982); *Jersey Central Power & Light Company*, 19 FERC ¶ 6,208 (1982).

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions to intervene serve to make the Cooperatives, the Power Agency, the Cities, and Fayetteville parties to this proceeding. Despite CP&L's objections, the Commission also finds that good cause exists to grant the interventions of AGA and the Ogburns, given their potential interest in the outcome of this case, the very early stage of the proceeding, and our belief that no undue prejudice or delay to other participants should result.

We shall deny the Cities' motion for rejection of CP&L's filing. We note that the company has complied with the cost support requirements of section 35.13 of the Commission's regulations in connection with the total proposed increase. Separate cost-support statements are not required to be submitted with CP&L's Phase I rates, which are simply set at a lower level than the total increase requested.

With respect to the level of CWIP included in CP&L's proposed rates, we find the intervenors' arguments for total or partial rejection of these amounts to be without merit. Our review indicates that the total amount claimed for CWIP (other than pollution control or fuel conversion CWIP) does not exceed the 6% ceiling imposed by section 35.26 of the Commission's regulations. While a hearing issue may exist concerning the allocation of CWIP-related charges to a particular customer class, our regulations clearly specify that the overall 6% limit will be measured in terms of total wholesale revenues, rather than revenues associated with individual customers or customer classes. In additon, as we noted in *Kentucky Utilities Company*, 24 FERC ¶ 61,338 (1983), the 10-month timing restriction is intended to limit CWIP-related rate increases to 6% in a single year. Since CP&L's Phase II CWIP increment does not exceed the 6% ceiling for the first year, its current filing is not in violation of the timing provision.[10]

We shall also deny the Cities' motion to summarily reject CP&L's inclusion of plant cancellation costs in cash working capital. We believe that this issue presents questions of fact which would be most appropriately resolved on the basis of an evidentiary record. We shall also deny Fayetteville's request for an order disallowing interim use of the proposed 95% ratchet applicable to the partial requirements rates. The Commission has been presented with no satisfactory basis for summarily resolving this issue. We note, however, that the interim effect of the revised ratchet on Fayetteville will be moderated through the company's commitment to phase-in the ratchet over a twelve month period.

We find that summary disposition is warranted as to the Electric Power Research Institute (EPRI) issue raised by several of the intervenors. The Commission has consistently found that contributions to EPRI should not be recovered through wholesale rates and has previously summarily ordered that such costs be excluded from the wholesale cost of service.[11] While CP&L argues that the research costs which it includes in administrative and general expenses are offset by corresponding revenue credits, the company has provided insufficient data to trace any exclusion of EPRI contributions.[12] In any case, however, we note that any inclusion of EPRI costs is not allowed under established precedent. Therefore, we shall order summary disposition as to this matter, although we shall not require CP&L to refile its proposed rates and cost statements in view of the relatively small revenue effect of this issue.

We believe that the remaining concerns expressed by the intervenors present questions of fact best resolved in the course of an evidentiary proceeding. Because a determination as to the advisability of a local hearing would be premature at this time, that decision will be left to the discretion of the presiding administrative law judge.

Our preliminary review of CP&L's submittal and the pleadings indicates that the proposed rates 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 CP&L's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one

[10] We note that the Ogburns' policy argument against allowing CWIP on plants not yet in service has already been considered in the CWIP rulemaking.

[11] *See, e.g., Central Louisiana Electric Company*, 20 FERC ¶ 61,350 (1982).

[12] We note that this determination as to EPRI costs is not extended to the other research costs included in CP&L's filing and challenged by the intervenors. We believe that inclusion of these other costs raises questions of fact which should be resolved in an evidentiary hearing.

day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our examination of CP&L's rates suggests that the Phase I rates may not yield excessive revenues, while the Phase II rates may result in substantially excessive revenues. Accordingly, we shall suspend the Phase I rates for one day from 60 days after filing, to become effective on November 27, 1983, subject to refund. We shall suspend the proposed Phase II rates for five months to become effective on April 27, 1984, subject to refund.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors.[18]

The Commission orders:

(A) The interventions of AGA and the Ogburns are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The Intervenors' motions to reject CP&L's filing, in whole or in part, are hereby denied.

(C) The Intervenors' motions for summary disposition are hereby denied.

(D) Summary disposition is hereby ordered with respect to CP&L's cost of service inclusion of EPRI expenses. This decision shall be reflected in any compliance cost of service and rates at the conclusion of this proceeding.

(E) CP&L's proposed rates are hereby accepted for filing; the Phase I rates are suspended for one day, to become effective on November 27, 1983, subject to refund, and the Phase II rates are suspended for five months, to become effective on April 27, 1984, subject to refund.

(F) 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 CP&L's rates.

(G) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(H) 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.

(I) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[18] From the information provided thus far, the Commission is not persuaded to depart from the established phasing practice. As indicated in Ordering Paragraph (I), *infra*, the presiding judge is authorized to modify the designated procedures upon a showing of good cause to do so. We note, however, that we would expect such a decision only in extraordinary circumstances, and we further observe that the Cooperatives' arguments for expedited consideration of the price squeeze issue roughly parallel those raised by the Cooperatives in earlier dockets. *See, e.g., Carolina Power & Light Company*, 21 FERC ¶ 61,027 (1982).

Carolina Power & Light Company; Docket No. ER83-765-000

Rate Schedule Designations

Filed: September 28, 1983.

(Step One Rates)

Description: (1) Resale Service Schedule RS83-1; (2) Resale Service Schedule RS83-2; (3) Resale Service Schedule RS83-3 and Bouldin Testimony Extract Re Ratchet; and (4) Rider 83-A.

Designation: FPC Electric Tariff, First Revised Volume No. 1

Sheet No.	Supersedes	Description
8th Revised Sheet Nos. 5, 6, 7.	7th Revised Sheet Nos. 5, 6, 7.	(1)
6th Revised Sheet Nos. 7A, 7B, 7C.	5th Revised Sheet Nos. 7A, 7B, 7C.	(2)
5th Revised Sheet Nos. 7D, 7E, 7F, 7G and Original Sheet No. 7H.	4th Revised Sheet Nos. 7D, 7E, 7F, 7G.	(3)
6th Revised Sheet No. 8.	5th Revised Sheet No. 8.	(4)
4th Revised Sheet No. 8A.	3rd Revised Sheet No. 8A.	(4)

Electric Tariff Customers

Electric Membership Cooperatives: Brunswick EMC, Carteret-Craven EMC, Central EMC, Four County EMC, French Broad River EMC, Jones-Onslow EMC, Lumbee River EMC, Pee Dee EMC, Piedmont EMC, Pitt & Greene EMC, Randolph EMC, South River EMC, Tideland EMC, Tri-County EMC, Wake EMC.

Other party	Rate schedule No.	Supplement No.	Supersedes supplement No.	Description
Town of Bennettsville	49	29, 30	27, 28	(2), (4)
Town of Camden	50	28, 29	26, 27	(2), (4)
City of Fayetteville	102	23, 24	21, 22	(3), (4)
Town of Waynesville	89	28, 29	26, 27	(2), (4)
Laurel Hill Electric Co	51	28, 29	26, 27	(2), (4)

(Step Two Rates)

Description: (7) Resale Rate Schedule RS83-1A; (8) Resale Rate Schedule RS83-2A; (9) Resale Rate Schedule RS83-3A and Bouldin Testimony Extract Re Ratchet

Designation: FPC Electric Tariff, First Revised Volume No. 1.

Sheet No.	Supersedes	Description
9th Revised Sheet Nos. 5, 6, 7.	8th Revised Sheet Nos. 5, 6, 7.	(7)
7th Revised Sheet Nos. 7A, 7B, 7C.	6th Revised Sheet Nos. 7A, 7B, 7C.	(8)
6th Revised Sheet Nos. 7D, 7E, 7F, 7G and 1st Revised Sheet No. 7H.	5th Revised Sheet Nos. 7D, 7E, 7F, 7G and Original Sheet 7H.	(9)

Other party	Rate schedule No.	Supplement No.	Supersedes supplement No.	Description
Town of Bennettsville	49	31	29	(8)
Town of Camden	50	30	28	(8)
City of Fayetteville	102	25	23	(8)
Town of Waynesville	89	30	28	(8)
Laurel Hill Electric Co	51	30	28	(8)

[FR Doc. 83-32024 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-14-000]

Centel Corp.; Application

November 25, 1983.

Take notice that on November 10, 1983, Centel Corporation (Centel) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to issue not more than $300 million of short-term debt with maturities not later than December 31, 1986.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32025 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-100-000]

Cleveland Electric Illuminating Co.; Filing

November 25, 1983

The filing Company submits the following:

Take notice that on November 14, 1983, Cleveland Electric Illuminating (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 15 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32026 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-99-000]

Cleveland Electric Illuminating Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 14, 1983, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 45 MW of Power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of November 8, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32027 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-98-000]

Cleveland Electric Illuminating Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 14, 1983, the Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing the transmission by CEI of approximately 45 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32028 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-96-000]

Connecticut Light & Power Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 14, 1983, Connecticut Light & Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Northfield Mountain Purchase Agreement between the CL&P, Western Massachusetts Electric Company (WMECO) and together with CL&P the Licensees) and the City of Holyoke, Massachusetts Gas and Electric Department (HG&E) dated as of June 1, 1983.

CL&P states that the Purchase Agreement provides for a sale to HG&E of a specified percentage of capacity

and related pondage from the Licensees Northfield Mountain Pumped Storage Hydro Electric Project (Project) together with related transmission service during the period November 1, 1983 through the earlier of: (i) April 30, 1986 or (ii) the day following the date Millstone Unit No. 3 (a unit presently under construction by the Licensees) first achieves 300 MWh per hour of net generation.

CL&P further states that the capacity charge rate for the Project is a rate determined on a cost-of-service basis for the entire Project. The monthly transmission charge is equal to one-twelfth of the average annual cost of transmission service on the Licensees' transmission system determined in accordance with Schedule B to the Purchase Agreement, multiplied by the number of kilowatts of winter capability which HG&E is entitled to receive pursuant to the Purchase Agreement during each month. The station service charge is equal to the average cost of oil-fired generation on the system of the Licensees for the prior month, multiplied by HG&E's share of the Projects' station service energy requirements.

CL&P indicates that the services to be provided under the Purchase Agreement are the same as services provided by the Licensees relating to a prior sale of capacity from the Project to Braintree Electric Department pursuant to a rate schedule dated as of May, 1982. (Rate Schedule FERC Nos. CL&P 272 and WMECO 206).

CL&P requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32029 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-346-000]

Consolidated Gas Supply Corp., Consolidated Gas Transmission Corp.; Filing of Stipulation and Agreement

November 23, 1983.

Take notice that on November 22, 1983, Consolidated Gas Supply Corporation (Supply Corporation) and Consolidated Gas Transmission Corporation (Transmission) submitted a settlement agreement pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC). The Stipulation and Agreement resolves all issues outstanding in the captioned proceeding. A summary of the settlement agreement and the facts of the case are as follows:

On May 1, 1980, Supply Corporation and Transmission filed a joint application in Docket No. CP80-346-000 seeking approval under section 7 of the Natural Gas Act to effectuate a corporate reorganization of Supply Corporation that would result in two separate entities—one subject to FERC jurisdiction and one subject to the jurisdiction of the Public Service Commission of West Virginia (PSCWV).

An Initial Decision conditionally granting the reorganization was issued by Administrative Law Judge Kimball on February 1, 1983, and the proceedings are now before the Commission on exceptions and oppositions to exceptions. Throughout the pendency of this proceeding, the parties and participants have endeavored to reach a satisfactory resolution of the issues by settlement. This unopposed Stipulation and Agreement is the result of those efforts.

The Stipulation and Agreement essentially conforms to the Initial Decision with three significant modifications. First, the parties have agreed that certain production properties and contracts will be retained by Supply Corporation—the corporate entity subject to PSCWV jurisdiction—and will be used by the new "Hope Gas Inc.," [1] for the exclusive purpose of providing retail gas distribution service in the State of West Virginia. Second, the parties have agreed that any costs associated with the reorganization incurred after January 1, 1984 shall be capitalized in Account No. 301 of the Commission's Uniform System of Accounts. In all other respects, the parties have agreed that the treatment of reorganization costs shall not disturb the settlement of rate matters in other dockets. Third, the appropriateness of the FERC filing fee or a portion thereof shall be governed by the Commission's decision in response to Supply Corporation's petition for waiver or reduction of the filing fee, filed in Docket No. CP80-346-000 on August 10, 1981. The PSCWV has withdrawn its opposition to the proposed corporate reorganization.

A copy of the Stipulation and Agreement is on file with the Commission and is available for public inspection.

Initial comments on this Stipulation and Agreement are due on December 12, 1983, and reply comments, if any, are due on December 22, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-32030 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Supply Corporation currently provides a retail distribution service in West Virginia through a division under the name Hope Gas. Upon approval of the reorganization, Supply Corporation will request authorization from the PSCWV to change its corporation name to "Hope Gas, Inc.," and will continue to provide gas utility service in West Virginia subject to the jurisdiction of the PSCWV.

[Docket No. ES84-16-000]

Duquesne Light Co.; Application

November 25, 1983.

Take notice that on November 11, 1983, Duquesne Light Company, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $250,000,000 of promissory notes and commercial paper from time to time with a final maturity date of not later than December 31, 1985.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32031 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-18-000]

El Paso Electric Co.; Application

November 25, 1983.

Take notice that on November 18, 1983, El Paso Electric Company (Applicant), filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section

204 of the Federal Power Act (i) to incur liability for payment of the principal of and premium, if any, and interest on up to $120,000,000 principal amount of Pollution Control Revenue Bonds proposed to be issued by the Maricopa County, Arizona Pollution Control Corporation in late December 1983, for the purpose of financing the Company's share of the cost of acquisition and construction of pollution control facilities at the Palo Verde Nuclear Generating Station in Maricopa County, Arizona and (ii) to issue second mortgage bonds of the Company in principal amount equal to the principal amount of such Pollution Control Revenue Bonds to secure the Company's obligation of payment of such Pollution Control Revenue Bonds.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure. The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32032 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2068-000]

Tod O. Dixon; Application

November 25, 1983.

The filing individual submits the following:

Take notice that on November 9, 1983, Tod O. Dixon filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President—The Connecticut Light and Power Company
Vice President—Western Massachusetts Electric Company
Vice President—Holyoke Water Power Company
Vice President—Holyoke Power & Electric Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32019 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1705-002]

Walter F. Fee; Application

November 25, 1983.

The filing individual submits the following:

Take notice that on November 8, 1983, Walter F. Fee filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director—Connecticut Yankee Atomic Power Company
Director—Maine Yankee Atomic Power Company
Director—Vermont Yankee Nuclear Power Corp.
Director—Yankee Atomic Electric Company
Executive Vice President and Director—The Connecticut Light and Power Company
Executive Vice President and Director—Hartford Electric Light Company
Executive Vice President and Director—Western Massachusetts Electric Company
Executive Vice President and Director—Holyoke Water Power Company
Executive Vice President and Director—Holyoke Power and Electric Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211, 385.214). All such motion or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32020 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-000]

Frontier Gas Storage Co.; Tariff Change

November 25, 1983.

Take notice that on November 18, 1983, Frontier Gas Storage Company (Frontier) tendered for filing First Revised Sheet No. 16 as part of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date is December 18, 1983.

Frontier states that the proposed change consists of increasing the administrative and managerial fee charged to Montana-Dakota Utilities Company (MDU) from $4,000 per month to $5,000 per month.

Frontier states that the originally authorized charge of $4,000 per month was based on costs to Frontier at the time that the service to MDU commenced in 1981. Since that time, Frontier's costs for these services have increased, necessitating the proposed increase.

Frontier is mailing a copy of this filing to MDU, its only customer receiving service under Rate Schedule X-1.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32033 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR84-2-000]

Hydrocarbon Trading and Transport Company, Inc. v. Texas Eastern Transmission Corp.; Filing of Complaint

November 23, 1983.

Take notice that on November 7, 1983, Hydrocarbon Trading and Transport Company, Inc. (HTT) filed a complaint, pursuant to 49 U.S.C. 15(7) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory

Commission (FERC or Commission), that the tariff rate specified in FERC No. 285 is unlawful and excessive. That rate, which became effective on January 1, 1983, was filed by Texas Eastern Transmission Corporation (Texas Eastern), and covers petroleum products transported by pipeline between Baytown, Texas and North Houston, Texas.

Specifically, HTT alleges that the rate is unjust and unreasonable, 49 U.S.C. 1(5); discriminatory, 49 U.S.C. 2; and puts HTT at a competitive disadvantage vis-a-vis other customers who are given an undue and unreasonable preference pursuant to other tariffs imposed by Texas Eastern, 49 U.S.C. 3.

In conjunction with this complaint, HTT, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, petitions FERC to suspend application of the rate specified in FERC No. 285 and to conduct an investigation into the lawfulness of that rate.

Among other things HTT states that Texas Eastern serves several propriety terminals owned and operated by wholly-owned subsidiaries. One such subsidiary, LaGloria, has a terminal several hundred yards from HTT's terminal in North Houston. LaGloria competes in the marketplace with other shippers, such as HTT, and the customers of shippers.

HTT states that a shipper's ability to compete in the refined products market is primarily a function of the price it charges for its products. A principal component of price is the cost of transportation to the shipper's facility. HTT alleges that Texas Eastern's costs of shipping to its wholly-owned subsidiary's propriety terminals are so low that they discriminate against independent terminals.

HTT also raises the question of whether Texas Eastern's published tariffs accurately reflect the reasonable compensation received by Texas Eastern to ship through its pipeline.

HTT further states that Texas Eastern's LaGloria terminal currently operates far below its capacity and is probably operating at a financial loss to Texas Eastern. Nevertheless, Texas Eastern has rejected requests by HTT to permit HTT to throughput diesel fuel through the LaGloria facility. HTT states that it made this request because HTT wants to empty one of its diesel tanks, bond the tank, and utilize it for foreign origin jet fuel.

HTT states that Texas Eastern has denied all requests by HTT to throughput or exchange product through Texas Eastern's North Houston facility. HTT alleges that, coupled with the excessively high tariff rates, this has resulted in substantial financial hardship to HTT and caused hundreds of transport tanker trucks to needlessly crown Houston's overburdened highways carrying HTT's products from other sources to North Houston.

HTT requests that the Commission:

(a) Docket this complaint and petition for hearing;

(b) Institute an investigation into the lawfulness of the rate published by Texas Eastern in FERC No. 285, effective January 1, 1983;

(c) After full hearing, order the reduction of the rate published in FERC No. 285 and order the refund, plus interest, of any unlawful rate collected by Texas Eastern pursuant to FERC No. 285 and its predecessor tariffs;

(d) After full hearing, order the payment of reparations to HTT for all damages incurred by HTT for the payment of rates and charges for the transportation of petroleum products from Baytown, or other points of origin, to North Houston with respect to those shipments delivered during the period commencing with the date two years prior to the filing of this complaint; and

(e) Order such other relief as the Commission finds appropriate under the circumstances.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before Dec. 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-32034 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-15-000]

Idaho Power Co.; Application

November 25, 1983.

Take notice that on November 10, 1983, Idaho Power Company (Applicant) filed an Application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act seeking an Order authorizing the Applicant to (a) finance the retrofit of the Applicant's 33⅓% undivided interest in certain air and water pollution control facilities at Units 1, 2 and 3 of the Jim Bridger Steam Generating Plant through loan agreements with Sweetwater County, Wyoming ("County"), which will provide for the issuance by the County of not to exceed $100,000,000 aggregate principal amount of pollution control revenue bonds and the loan of the proceeds to the Applicant, and (b) the assumption of liability as guarantor of the principal of, interest on and premium, if any, on the Bonds of the County. The proposed issuance date for the initial series of the Bonds is on or after December 15, 1983.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before December 9, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (385.211 or 385.214). The Application is on file and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32035 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-97-000

Iowa Illinois Gas and Electric Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 14, 1983, Iowa Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing a First Amendment dated November 7, 1983 (the Amendment) to Facilities Agreement dated September 4, 1981, as supplemented, with Interstate Power Company (Interstate), proposed effective on the in-service date of certain 345 kV electric transmission facilities between Louisa Generating Station Substation 93, Louisa County, Iowa, and Substation 39, Rock Island County, Illinois.

Iowa-Illinois states that the Amendment adopts First Revised Service Schedule A and First Revised Service Schedule B, respectively reflecting additional facilities and points of connection, and associated metering, as a result of the completion of facilities which, under separate arrangements, are owned as tenants in common by the parties in specified shares and are being constructed by Iowa-Illinois and will be

operated and maintained by Iowa-Illinois. The Amendment also incorporates a new service Schedule D, Transmission Service Schedules, to which separate arrangements may be appended as agreed from time to time, and to which Transmission Service Schedule No. 1, similarly dated and proposed effective, is appended.

Iowa-Illinois futher states that Transmission Service Schedule No. 1 provides for utilization by Interstate, in respect to its share of Louisa Generating Station capacity, of Iowa-Illinois' 161 kV facilities from Substation 39 to Substation 17 to the County Line Connection, an existing point of connection between the parties, and incorporates transmission and transformation rates, charges, and loss responsibility factors designed to compensate Iowa-Illinois for reflected cost of facilities provided, as the scheduling path, and associated operation and maintenance, and for transmission and transformation losses for which compensation in kind is provided. Iowa-Illinois notes that a related, but independent filing will be made in respect to the operation of Louisa Generating Station outlet transmission 345 kV facilities of which the facilities between Substations 93 and 39 are a part.

Copies of the filing have been served upon the Iowa State Commerce Commission, the Illinois Commerce Commission, and the Minnesota Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32036 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-102-000]

Montaup Electric Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 16, 1983, Montaup Electric Company (Montaup) tendered for filing rate schedule revisions adding a purchased capacity adjustment clause to its M-9 rate for all-requirements service to its affiliates within the Eastern Utilities Associates (EUA) system, Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) in Rhode Island, and contract demand service to three non-affiliated customers: the Town of Middleborough in Massachusetts and Pascoag Fire District and Newport Electric Corporation in Rhode Island. The cause would reflect changes in the cost of purchased capacity under long-term unit purchase agreements as projected in Montaup's M-9 filing made on October 27, 1983.

Montaup is filing the clause because of inaccuracies in estimates of purchased capacity costs provided to Montaup by its suppliers of purchased power and used by Montaup in future test period cost studies. Montaup has encouraged its suppliers to prepare the estimates carefully but the inaccuracies, which are attributed in part to the difficulties of forecasting expenditures on nuclear plants, have continued. The adjustment is limited to purchased capacity expense. The Company proposes an annual review based on actual calendar year data to determine whether increases in purchased capacity costs flowed through under the clause have been offset by decreases in other costs. If so, the Company would make refunds.

Montaup requests waiver of the 60-day notice requirement in order that the clause may be permitted to become effective at the same time as the M-9 rate is allowed to become effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32037 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-101-000]

Southwestern Electric Power Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 16, 1983, Southwestern Electric Power Company (SWEPCO), tendered for filing a Letter Agreement between SWEPCO and the City of Lafayette, Louisiana (City), dated September 29, 1983, which provides for SWEPCO to furnish transmission service through its system for capacity and associated energy that City has arranged to be transmitted by SWEPCO in the amount of up to 80 megawatts and the purchase of up to 100 megawatts from Arkansas Electric Cooperative Corporation to be transmitted to SWEPCO's interconnections with Central Louisiana Electric Company and Gulf States Utilities Company. The duration of the service is intended to be from approximately October 9 through December 10, 1983, to coincide with a planned maintenance outage of Rodemacher No. 2, of which the City is a joint owner.

SWEPCO requests an effective date of October 9, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the Arkansas Public Service Commission, Louisiana Public Service Commission, Public Utility Commission of Texas, Arkansas Electric Cooperative Corporation, Central Louisiana Electric Company, Gulf States Utilities Company, Southwestern Power Administration and the City of Lafayette, Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to interfene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32018 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-103-000]

Wisconsin Electric Power Co.; Filing

November 25, 1983.

The filing Company submits the following:

Take notice that on November 17, 1983, Wisconsin Electric Power Company (WEP) tendered for filing proposed changes to its rates for sales for resale to its wholesale customers. A Settlement Agreement was reached by the Company and all of its wholesale customers prior to the filing of this case. As agreed upon in pre-filing settlement, the present filing reduces the base cost of fuel in the fuel cost adjustment clause as necessary to recover the additional revenue agreed upon in settlement. The impact of the change is $2,001,000 on an annualized basis for the 1984 test year or $1,967,000 on an annualized basis for period I. However, since the revision is to become effective (after suspension) on June 1, 1984, the impact on the customers in 1984 will actually be approximately 7/12's of the 2,001,000 annualized amount. Therefore, customers will pay less in 1984 under the rates agreed to in this Settlement Agreement than they paid in 1983 under the rates in effect for that year.

The Company proposes an effective date for the filing of January 16, 1983, which is sixty days after the date of this filing, and requests that the filing be suspended through May 31, 1984, to become effective June 1, 1984.

Copies of this filing have been served upon the Company's jurisdictional customers. Copies have also been mailed to the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 9, 1983. * * * Appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32012 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 7260-001, *et al.*]

Hydroelectric Applications; Aero Construction, Inc., et al.; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Preliminary Permit.

b. Project No: 7260-001.

c. Date Filed: August 1, 1983.

d. Applicant: Aero Construction, Incorporated.

e. Name of Project: Wister Lake and Dam.

f. Location: Leflore County, Oklahoma.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 23, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed powerhouse containing one generating unit rated at 3 MW; (2) a proposed transmission line; and (3) appurtenant facilities. The Applicant would utilize an existing dam and lands owned by the U.S. Army Corps of Engineers. The estimated average annual energy output for the project would be 11,500,000 kWh.

k. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months to conduct feasibility studies, prepare final design plans and a license application. Applicant estimates the cost for this work would be $12,500.

l. Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, give the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for license.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

2a. Type of Application: Preliminary Permit.

b. Project No.: 7296-002.

c. Date Filed: August 1, 1983.

d. Applicant: F & T Energy Corporation.

e. Name of Project: Toad Suck and Ferry Lock and Dam No. 8.

f. Location: Perry County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791-825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 27, 1984.

j. Description of Project: The proposed project would consitst of: (1) A proposed powerhouse containing two generating units rated at 4 MW each; (2) a proposed 13.8 KV transmission line; and (3) appurtenant facilities. The Applicant would utilize an existing dam and lands owned by the U.S. Army Corps of Engineers. The estimated average annual energy output for the project would be 24,000,000 KWH.

k. This notice also consitsts of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months to conduct feasibility studies, prepare final design plans and a license application. Applicant estimates the cost for this work would be $15,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for license.

3a. Type of Application: 5 MW Exemption.

b. Project No.: 7513-000.

c. Date Filed: August 8, 1983.

d. Applicant: Commonwealth Hydroelectric, Incorporated.

e. Name of Project: Old Mill Hydroelectric Project.

f. Location: On the North River, in the Town of Bridgewater in Rockingham, Virginia.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended), and Part I of the Federal Power Act.

h. Contact Person: Mr. John R. Pollack, President, Commonwealth Hydroelectric, Inc., Rt. 1, Box 413, Afton, Virginia 22920.

i. Comment Date: December 27, 1984.

j. Description of Project: The run-of-river project would consist of: (1) An existing concrete dam, 275 feet long and 12 feet high; (2) an impoundment with normal water surface elevation of 1,184 msl, a storage capacity of 16 acre-feet and surface area of three acres; (3) and existing concrete mill race, 108 feet long and 12 feet wide, located adjacent to and perpendicular to the dam; (4) an existing tailrace located under the millrace which empties into the river at a right angle approximately 30 feet downstream from the dam; (5) the millrace will be utilized for placement of two new turbine-generator units with a total installed capacity of 260 kW; (6) a proposed transmission line, to be interconnected into the existing 34.5-kW distribution line of Virginia Electric and Power Co. located approximately half a mile from the project; and (7) appurtenant facilities.

The applicant proposes modifications and repairs to the dam, millrace, tailrace and mill area. Applicant estimates that the average annual energy generation would be 1,140,000 kwh. The owner of the dam, millrace and associated facilities is the town of Bridgewater, Virginia.

k. Purpose of Project: The applicant anticipates that project energy will be sold to the Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priorty of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license Applicants that would seek to take or develop the project.

4a. Type of Application: Preliminary Permit.

b. Project No. 7682–000.

c. Date Filed: October 3, 1983.

d. Applicant: Town of Newburgh, Indiana.

e. Name of Project: Newburgh Lock & Dam Hydro Project.

f. Location: On the Ohio River in Henderson County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Larry J. Hessler, Town Manager, P.O. Box 273, Newburgh, Indiana 47630.

i. Comment Date: December 27, 1983.

j. Competing Application: Project No. 7375–000, Date Filed: June 16, 1983. Due Date: September 19, 1983.

k. Description of Project: The proposed project would utilize facilities at the U.S. Army Corps of Engineers' Newburgh Locks and Dam, and would consist of: (1) A new penstock; (2) a proposed powerhouse with an installed capacity of 40 MW; (3) a new tailrace; (4) transmission lines; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 180 GWh. All power generated would be sold to a local utility or Alcoa Corporation.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $125,000.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

5a. Type of Application: Preliminary Permit.

b. Project No: 7740–000.

c. Date Filed: October 20, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Lyle Creek.

f. Location: On Lyle Creek, near Enumclaw, in Pierce County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: January 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete diversion dam at elevation 3,210 feet; (2) A 20-inch-diameter, 6,864-foot-long low pressure conveyance pipe; (3) a 10-foot-diameter, 35-foot-high surge tank at elevation 3,120 feet; (4) a 14-inch-diameter, 3,696-foot-long penstock; (5) a powerhouse containing a single generator with rated capacity of 1,041 kW and average annual energy output of 3.64 GWh; (6) a switchyard; and (7) a 5.3-mile-long, 115-kV transmission line to a switchyard.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $80,000 to $100,000.

k. Purpose of Project: Power may be marketed to Puget Sound Power and Light, Seattle City Light, or Tacoma City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

6a. Type of Application: Minor License.

b. Project No: 5000–001.

c. Date Filed: August 30, 1983.

d. Applicant: Lawrence R. Taft.

e. Name of Project: Kayuta.

f. Location: On the Black River, in the Town of Boonville, Oneida County, New York.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, New York 13036.

i. Comment Date: January 16, 1984.

j. Description of Project: The proposed project would consist of the following existing facilities: (1) A 450-foot-long 26-foot-high dam comprising: (a) a 200-foot-long spillway section with crest elevation 1141.7 feet msl; (b) a 40-foot-long gated intake section at the left (south) river bank having four 30-foot-long 3-foot-diameter steel penstocks; and (c) a 210-foot-long earth embankment; (2) a reservoir (Kayuta Lake) having a surface area of 793 acres and a gross storage capacity of 4,889 acre-feet at normal pool elevation 1141.7 feet msl; and (3) a tailrace having surface elevation 1126.4 feet msl.

Applicant would add new facilities consisting of: (1) A trash rack; (2) short lengths of penstock; (3) a powerhouse containing two generating units having a total rated capacity of 400-kW operated under a 15-foot head and at a flow of 405 cfs; (4) a switchyard/substation; (5) a

100-foot-long 46-kV transmission line; and (6) appurtenant facilities.

Applicant estimates that the proposed project would cost $500,000. This application was filed during the term of the Applicant's preliminary permit for Project No. 5000.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation. Applicant estimates that the average annual energy output would be 2.0 million kWh.

l. This notice also consists of the following standard paragraphs: A2, B, C and D1.

7a. Type of Application: Preliminary Permit.

b. Project No: 7556–000.

c. Date Filed: August 24, 1983.

d. Applicant: City of Santa Clara.

e. Name of Project: Upper McCloud River.

f. Location: On McCloud River partly within Shasta National Forest, in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Barry Flynn, Director of Electric Utility, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.

i. Comment Date: January 16, 1984.

j. Description of Project: The proposed project would consist of three consecutive developments. Development No. 1 comprise: (1) A 40-foot-high diversion structure at elevation 3,740 feet; (2) A 66-inch-diameter, 31,000-foot-long conduit; (3) two 800-foot-long, 48-inch-diameter penstocks; (4) a powerhouse containing two generating units with combined rated capacity of 2,080 kW, operating under 250 feet of head; and (5) a 2-mile-long, 12-kV transmission line connecting the powerhouse with the proposed switchyard at Development No. 2.

Development No. 2 comprise: (1) A 20-foot-high diversion structure at elevation 3,460 feet; (2) a 76-inch-diameter, 7,300-foot-long tunnel; (3) a 76-inch-diameter, 2,130-foot-long penstock; (4) a powerhouse containing two generating units with combined rated capacity of 7,500 kW, operating under 250 feet of head; and (5) a 4.5-mile-long, 12 kV transmission line connecting the powerhouse with the switchyard of Development No. 3.

Development No. 3 comprise: (1) A 25-foot-high diversion structure at elevation 2,960 feet; (2) a 40-foot-wide, 10-foot-deep, 14,700-foot-long open flume; (3) a 120-inch-diameter, 1,820-foot-long penstock; (4) a powerhouse containing four generating units with combined rated capacity of 45,000 kW, operating under 270 feet of head; and (5) a short tap into the existing 60-kV transmission line within 100 feet of the powerhouse.

k. Purpose of Project: The estimated 287 million kWh of project energy will be used by the Aplicant to meet its system demand.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

8a. Type of Application: 5 MW Exemption.

b. Project No: 6966–002.

c. Date Filed: August 11, 1983.

d. Applicant: Brassworks Associates.

e. Name of Project: Brassworks Project.

f. Location: Mill River, Town of Williamsburg, Hampshire County, Massachusetts.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1978 (16 U.S.C. 2705 and 2708).

h. Contact Person: Jeffrey R. Folts, V. P., Curran Associates, Inc., 182 Main Street, Northampton, Massachusetts 01060.

i. Comment Date: December 27, 1983.

j. Description of Project: The proposed project would consist of: (1) An existing 150-foot-long, 18-foot-high stone masonry spillway dam topped by new 16-inch flashboards; (2) and existing 2.7 acre reservoir to be increased in area to 4.7 acres by the addition of the flashboards to a normal water surface elevation of 439.3 feet M.S.L.; (3) an existing intake at the east abutment and a 200-foot-long 5-foot-diameter steel penstock; (4) an existing powerhouse to be retrofitted with a new 75 kW turgine-generator; (5) an existing 150-foot-long tailrace channel; (6) a transmission line; and (7) appurtenant facilities. The project would generate up to 350,000 kWh annually. The project is owned by the Applicant.

k. Purpose of Project: Energy produced at the project would be sold to Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

9a. Type of Application: Exemption (5 MW or less).

b. Project No: 4595–002.

c. Date Filed: September 19, 1983.

d. Applicant: Hat Creek Hydro, Inc.

e. Name of Project: Hat Creek Hydro Power.

f. Location: On Hat Creek within Lassen National Forest near the town of Old Station in Shasta County, California.

g. Filed Pursuant to: Section 408 of Energy Security Act of 1980 (16 U.S.C. 2705, and 2708 *as amended*).

h. Contact Person: Mr. Floyd N. Bidwell, P.O. Box 547, Cassell, California 96016.

i. Comment Date: December 27, 1983.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion structure at elevation 3,644 feet; (2) a 60-inch-diameter, 2,400-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 660 kW, operating under a head of 95 feet; and (4) a 12-kV, 2,000-foot-long transmission line connecting the powerhouse with an existing Pacific Gas and Electric Company (PG&E) transmission line northeast of the powerhouse.

k. Purpose of Project: The estimated 4.96 million kWh of project energy would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

10a. Type of Application: Exemption (Conduit).

b. Project No: 7510–000.

c. Date Filed: August 8, 1983.

d. Applicant: City of San Diego.

e. Name of Project: Point Loma.

f. Location: the Point Loma sewage treatment plant in San Diego, California.

g. Filed Pursuant to: Federal Power Act (Act) [16 U.S.C. 823(a)].

h. Contact Person: R.W. King, Water Utilities Director, City Administration Building, M.S. 9B, 202 "C" Street, San Diego, California 92101.

i. Comment Date: December 27, 1983.

j. Description of Project: The proposed project would consist of a powerhouse adjacent to the existing energy dissipating control valve structure, containing a 1.35–MW generating unit. The average annual energy generation is estimated to be 3,300,000 kWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

11a. Type of Application: Preliminary Permit.

b. Project No: 7675–000.

c. Date Filed: October 3, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Sloan Peak Water Power Project.

f. Location: On an unnamed creek near Sloan Peak, tributary of the North Fork Sauk River, near the town of Darington, in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: January 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and a surface elevation of 2,810 feet; (3) a 2,800-foot-long, 18-inch-diameter penstock from the diversion dam to the powerhouse; (4) a powerhouse with a single generating unit with a capacity of 1,150 kW; (5) a switchyard; and (6) a .5-mile-long, 55-kV transmission line. The average annual energy production would be 4,030,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which time it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light, Snohomish County P.U.D., or Seattle City Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 7676–000.

c. Date filed: October 3, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Noisy Creek Water Power Project.

f. Location: On Noisy Creek, Tribuary of the Baker River, near the town of Concrete, in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: January 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and a surface elevation of 1,630 feet; (3) a 4,800-foot-long, 36-inch-diameter pipeline from the diversion dam to a surge tank; (4) a 43-foot-high, 10-foot-diameter surge tank at elevation 1,550 feet; (5) a 2,460-foot-long, 30-inch diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 3,700 kW; (7) a switchyard; and (8) a 7.4-mile-long, 115-kV transmission line. The average annual energy production would be 13,000,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of preliminary permit for a term of 36 months during which time it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

13a. Type of Application: Preliminary Permit.

b. Project No: 7678–000.

c. Date Filed: October 3, 1983.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Goshen Dam Hydro Project.

f. Location: On the Elkhart River in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, President, Michiana, Hydro-Electric Power Corporation, 1634 East Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: January 16, 1984.

J. Description of Project: The proposed project would consist of: (1) An existing 14-foot-high and 200-foot-long dam; (2) a small reservoir with a maximum surface elevation of 793 feet above mean sea level; (3) an existing masonry powerhouse with an installed capacity of 400 kW; (4) transmission lines; and (5) appurtenant facilities. The proposed Goshen Dam Hydro Project utilizes facilities owned by the City of Goshen, Indiana. Applicant estimates the average annual generation for the project to be 2,628 MWh. All power generated would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. *Proposed Scope of Studies under Permit* —Applicant has requested a 36-month permit to prepare a definite project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an enviornmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $11,500.

m. *Purpose of Preliminary Permit* —A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

14a. Type of Application: Preliminary Permit.

b. Project No: 7677–000.

c. Date Filed: October 3, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: North Fork Rapid River Water Power Project.

f. Location: On the North Fork Rapid River, near the town of Skykomish, in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: January 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete-gravity diversion dam, (2) a one acre reservoir with a capacity of 2 acre-feet and a surface elevation of 3,010 feet; (3) a 3,960-foot-long, 44-inch-diameter, pipeline from the diversion dam to a surge tank; (4) a 25-foot-high, 10-foot-diameter surge tank at elevation 2,950 feet; (5) a 2,110-foot-long, 28-inch diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 3,820 kW; (7) a switchyard; and (8) a 13-mile-long, 115-kV transmission line. The average annual energy production would be 13,387,000.

A preliminary permit does not authorize construction. Applicant seeks issuance of preliminary permit for a term of 36 months during which time it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Chelan County P.U.D. No. 1, the Snohomish County P.U.D. No. 1 or Puget Sound Power & Light.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

15a. Type of Application: Preliminary Permit.

b. Project No: 7666–000.

c. Date Filed: October 3, 1983.
d. Applicant: WP, Incorporated.
e. Name of Project: Meadow Creek Water Power Project.
f. Location: On Meadow Creek, tributary of the Rapid River, near the town of Skykomish, in Snohomish County, Washington.
g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).
h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.
i. Comment Date: January 16, 1984.
j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete-gravity diversion dam; (2) a one acre reservoir with a capacity of 2 acre-feet and a surface elevation of 2,890 feet; (3) a 1,500-foot-long, 30-inch-diameter, pipeline from the diversion dam to a surge tank; (4) a 25-foot-high, 10-foot-diameter surge tank at elevation 2,870 feet; (5) a 1,600-foot-long, 24-inch diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 3,470 kW; (7) a switchyard; and (8) a 12-mile-long, 230-kV transmission line. The average annual energy production would be 12,164,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of preliminary permit for a term of 36 months during which time it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Chelan County P.U.D. No. 1, or the Bonneville Power Administration.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.
16a. Type of Application: Exemption (5 MW or Less).
b. Project No: 5390–002.
c. Date Filed: September 21, 1983.
d. Applicant: City of Cove, Oregon.
e. Name of Project: Mill Creek.
f. Location: On Mill Creek, near Cove, in Union County, Oregon, and occupying U.S. lands in Whitman National Forest.
g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 *as amended.*
h. Contact Person: Michael H. Giddings, P.O. Box 154, LaGrande, Oregon 97850.
i. Comment Date: January 3, 1984.
j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 15-foot-long log-and-timber diversion structure with a 3-foot-diameter intake on Bridge Creek at elevation 4,714 feet; (2) a 6,000-foot-long, 1.5-foot-diameter pipeline to; (3) a 7-foot-high, 20-foot-long log-and-timber diversion structure with a 3.5-foot-diameter intake on Mill Creek at elevation 4,438 feet; (4) a 9,000-foot-long, 2-foot-diameter steel pipeline; (5) a 3,800-foot-long, 20-inch-diameter buried steel penstock; (6) a powerhouse containing one generating unit rated at 625 kW; (7) a tailrace; and (8) an 800-foot-long transmission line. The average annual energy generation is estimated to be 2.5 million kWh.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Power would be sold to CP National.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3a.
17a. Type of Application: Preliminary Permit.
b. Project No: 7524–000.
c. Date Filed: August 15, 1983, and supplemented October 3, 1983.
d. Applicant: Gentry Resources Corporation.
e. Name of Project: Lake Pleasant Pumped Storage.
f. Location: On the Agua Fria River in either Maricopa or Yavapai County, near Phoenix, Arizona.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Darold E. Proctor, President, Gentry Resources Corporation, 1642 S. Parker Road, Suite 108, Denver, Colorado 80231.
i. Comment Date: January 23, 1984.
j. Description of Project: The proposed Lake Pleasant Pumped Storage would utilize the Bureau of Recolamation's New Waddell Dam and Lake Pleasant Reservoir in a pumped storage hydro project, and would consist of: (1) A proposed earth-fill or masonry upper storage dam; (2) a newly constructed powerhouse with a total installed capacity of 150 MW; (3) a pressure conduit or shaft to deliver water providing a 800 to 1400 foot head; (4) a 230-kV transmission line 10 miles or more in length and connecting to the Westwing switchyard owned by Arizona Public Service Company; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 360 GWh. All power generated would be sold to Arizona Public Service Company.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.
l. *Proposed Scope of Studies under Permit*—Applicant has requiested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $950,000.
m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.
18a. Type of Application: Preliminary Permit.
b. Project No.: 7519–000.
c. Date Filed: August 11, 1983, and supplemented October 3, 1983.
d. Applicant: Gentry Resources Corporation.
e. Name of Project: Black Mountain Pumped Storage Hydro Project.
f. Location: On or near the Colorado River and Lake Mead in either Mohave County, Arizona, or Clark County, Nevada.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Darold E. Proctor, President, Gentry Resources Corporation, 1642 S. Parker Road, Suite 108, Denver, Colorado 80231.
i. Comment Date: January 23, 1984.
j. Description of Project: The proposed Black Mountain Hydro Project would utilize the Bureau of Reclamation's Lake Mead Reservoir in a pumped storage hydro project, and would consist of: (1) A proposed earth-fill or masonry upper storage dam; (2) a newly constructed powerhouse with a total installed capacity of 250 MW; (3) a switchyard adjacent to the powerhouse; (4) a pressure conduit or shaft to deliver water providing a head of 500 to 3000 feet; (5) intake and discharge pipes connecting the turbines to the main water body; (6) new surge tanks; (7) a proposed 230-kV transmission line varying from a possible 10 to 240 miles

in length; (8) new roads; and (9) appurtenant facilities. The proposed project will be located entirely on Federal lands. The Applicant estimates the average annual generation to be a minimum of 600 GWh. The energy would be marketed in not more than 2 contiguous counties in either Arizona or California or Nevada depending on marketing arrangements.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies Under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $950,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permitte undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

19 a. Type of Application: 5 MW Exemption.

b. Project No: 6765–001.

c. Date Filed: April 11, 1983.

d. Applicant: BMB Enterprises, Inc.

e. Name of Project: Manti Creek Hydro Project.

f. Location: Manti Creek in Sanpete County, Utah.

g. Filed Pursuant to : Section 408 of the Energy Security Act of 1980, (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: W. Berry Hutchings, 1015 South Davis Boulevard, Bountiful, Utah 84010.

i. Comment Date: January 3, 1984.

j. Description of Project: The proposed project would consist of: (1) Two new cross-channel concrete diversion structures, one on North Fork of Manti Creek and the other on South Fork of Manti Creek with both at elevation 7,800 feet m.s.l., each being 2½ feet high with overflow intakes and provisions for trashracks, gates and sluiceways; (2) two steel pipeline penstocks, one 24 inches in diameter (North Fork) and 18,500 feet long and the other 18 inches in diameter (South Fork) and 1,280 feet long to its junction with the North Fork penstock at elevation 7,720 feet m.s.l., each being tar coated, wrapped and buried; (3) a new powerhouse containing a turbine-generator unit operating under a gross head of 1,380 feet and having a rated capacity of 3,150 kW; (4) a tailrace returning flow to Manti Creek; (5) a new 46-kV transmission line, approximately 8,000 feet long, connecting to a Utah Power and Light Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 9,526,000 kWh. Project energy would be sold to Utah Power and Light Company.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

l. *Proposed Exemption:* An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

20 a. Type of Application: Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity.

b. Project No: 7478–000.

c. Date Filed: August 1, 1983 and supplemented September 15, 1983.

d. Applicant: Deep River Hydro.

e. Name of Project: Coleridge Hydro Project.

f. Location: On the Deep River in Coleridge County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: William H. Lee, P.O. Box 267, Saxaphaw, North Carolina 27340.

i. Comment Date: December 30, 1983.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high and 660-foot-long concrete dam; (2) a small reservoir with a surface area of 10 acres; (3) a new powerhouse with a total installed capacity of 575 kW; (4) transmission lines; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 2,500 MWh. All power generated would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

l. *Proposed Exemption:* An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protests the Exemptee from permit or license applicants that would seek to take or develop the project.

21a. Type of Application: Preliminary Permit.

b. Project No.: 7637–000.

c. Date Filed: September 22, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Rattlesnake Creek.

f. Location: On Rattlesnake Creek, near town of Husum, in Klichitat County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington, 98102.

i. Comment Date: January 23, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete gravity diversion dam at an elevation of 930 feet; (2) a 144-inch-diameter, 35,400-foot-long low pressure conveyance pipe; (3) a 10-foot-diameter, 45-foot-high surge tank at elevation 890 feet; (4) a 52-inch-diameter, 4,700-foot-long penstock; (5) a powerhouse with a single generator having a rated capacity of 6.6 MW and an average annual output of 23.2 GWh; and (6) a 0.1-mile-long, 69-kV transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $90,000 to $100,000.

k. Purpose of Project: Power may be marketed to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

22a. Type of Application: 5 MW Exemption.

b. Project No.: 7329–000.

c. Date Filed: June 2, 1983.

d. Applicant: Village of Champlain.

e. Name of Project: Great Chazy Project.

f. Location: On the Great Chazy River, Clinton County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Lawrence Paquette, Village Clerk, Village of Champlain, Main Street, Champlain, New York 12919.

i. Comment Date: December 30, 1983.

j. Description of Project: The proposed project would consist of: (1) The existing masonry dam 3 to 5 feet high and 315 feet long; (2) a reservoir with negligible storage, a surface area of 2.8 acres, and

a normal water surface elevation of 162.6 feet msl; (3) the existing diversion channel; (4) the existing headpond; (5) an existing intake structure; (6) an existing 7-foot-diameter steel penstock 45 feet long; (7) a new powerhouse containing 3 generating units with a total installed capacity of 120 kW; (8) an existing tailrace; (9) a new 0.48-kV transmission line 100 feet long; and (10) appurtenant facilities. The Applicant estimates the annual generation would be 751,000 kWh. All project power would be sold to New York State Electric & Gas Corporation.

k. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

23a. Type of Application: Declaration of Intention.

b. Project No.: EL83-13-000.

c. Date Filed: March 21, 1983.

d. Applicant: Lynn E. Stevenson.

e. Name of Project: Lynn Stevenson.

f. Location: On unnamed tributaries to the Snake River, in Gooding County, Idaho.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: James C. Tucker, Nelson, Rosholt, Robertson, Tolman & Tucker, P.O. Box 1906, Twin Falls, Idaho 83301.

i. Comment Date: January 3, 1984.

j. Description of Project: The project consists of: (1) Development No. 1 comprising a 580-foot-long, 14-inch-diameter steel penstock installed at the outflow of commercial fish ponds and an 80-kW generator; and (2) Development No. 2 comprising a 400-foot-long, 18-inch-diameter steel penstock installed at the outflow of commercial fish ponds and a 70-kW generator.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over the project.

k. Puspose of Project: Power generated is utilized by the Applicant, although the Applicant is comtemplating selling some power.

l. This notice also consists of the following standard paragraphs: B, C and D2.

24a. Type of Application: Preliminary Permit.

b. Project No.: 7716-000.

c. Date Filed: October 11, 1983.

d. Applicant: Olympus Energy Corporation.

e. Name of Project: South Bear.

f. Location: On South Fork Bear Creek, near Sappho, in Clallam County, Washington, and occupying Olympic National Forest lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Jerome E. Livingston, Olymus Energy Corporation, 201 215 St. S.E., Bothell, Washington 98011.

i. Comment Date: January 20, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high concrete diversion weir at elevation 1,280 feet; (2) a 5,000-foot-long, 36-inch-diameter pipeline; (3) a powerhouse containing one generating unit rated at 2.0 MW at a head of 480 feet; and (4) a 2,500-foot-long transmission line. The average annual energy generation is estimated to be 9 million kWh.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 30 months, during which it would conduct engineering, environmental, economic, and feasibility studies, and prepare an FERC license application. The cost of the work is estimated to be $210,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

25a. Type of Application: License (Under 5 MW).

b. Project No: 7610-000.

c. Date Filed: September 12, 1983

d. Applicant: The City of Rome, New York.

e. Name of Project: Delta.

f. Location: On the Mohawk River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Carl J. Eilenberg, Mayor, City of Rome, City Hall, Rome, New York 13440.

i. Comment Date: January 20, 1984.

j. Description of Project: The project will consist of: (1) The 1,016-foot-long Delta Dam with a maximum height of 92 feet; (2) the Delta Reservoir with a storage capacity of 63,200 acre-feet and a surface area of 2,700 acres at spillway crest elevation 550 feet (Barge Canal Datum); (3) a proposed powerhouse which will include one generating unit with an installed generating capacity of 2,100 kw; (4) a proposed 100-foot-long, open channel tailrace; (5) a proposed 600-foot-long, 13.2-kv transmission line; (6) a proposed switchyard; and (7) appurtenant facilities. The Applicant estimates the average annual energy generation to be 10.3 GWh.

The existing Delta Dam and Reservoir are owned by New York State and are under the jurisdiction of the New York State Department of Transportation.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

26a. Type of Application: License (Major >5MW).

b. Project No: 4158-001.

c. Date Filed: June 2, 1983.

d. Applicant: Georgia-Pacific Corporation.

e. Name of Project: Skookum Creek Project.

f. Location: On Orsino, Hayden, and Skookum Creeks, near the Town of Acme, in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. D. L. Dahlgren, General Manager, Georgia-Pacific Corporation, 330 West Laurel St., Bellingham, Washington 98225.

i. Comment Date: January 20, 1984.

j. Description of Project: The proposed project would consist of: (1) A concrete wing-walled intake structure on Orsino Creek at elevation 2,100 feet; (2) a 2,000-foot-long, 42-inch-diameter pipeline to; (3) a concrete wing-walled intake structure on Hayden Creek; (4) a 42-inch-diameter, 20,000-foot-long pipeline; (5) a 42-inch-diameter steel penstock; (6) a powerhouse containing a single generating unit with a total rated capacity of 6.0 MW at elevation 800 feet; (7) a tailrace to discharge water into Skookum Creek; and (8) a 2.3-mile-long transmission line. The average annual energy production is estimated at 27,900,000 KWh.

k. Purpose of Project: Power will be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D2.

a. Type of Application: Preliminary Permit.

b. Project No: 7741-000

c. Date Filed: October 20, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Thorp Creek.

f. Location: In the Mt. Baker-Snoqualmie National Forest, on Throp Creek, near Easton, in Kittitas County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: January 20, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete diversion dam at elevation 3,290 feet; (2) a 30-inch-diameter, 10,000-foot-long penstock; (3) a powerhouse containing a single generator with a rated capacity of 2,393 kW and an average annual energy output of 8.38 GWh; (4) a switchyard; and (5) a 10.4-mile-long, 115–kV transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $70,000 to $90,000.

k. Purpose of Project: Power may be marketed to Puget Sound Power and Light, Seattle City Light, or Kittitas County PUD No. 1.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

a. Type of Application: 5 MW Exemption.

b. Project No: 7326–001.

c. Date Filed: September 26, 1983.

d. Applicant: Edward J. Forster and Ronald P. Forster.

e. Name of Project: Forster's Mill.

f. Location: On the Lane River in the Town of Sutton Mills, Merrimack County, New Hampshire.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*), and Part I of the Federal Power Act.

h. Contact Person: Edward J. Forster, RFD 1, Antrim, New Hampshire 03440.

i. Comment Date: December 30, 1983.

j. Description of Project: The run-of-river project would utilize existing facilities consisting of: (1) A 44-foot-long 17-foot-high gravity-type dam having a 23-foot-long spillway section with crest elevation 840 feet msl surmounted by 4-foot-high flashboards and having a headworks section and a sluiceway; (2) a reservior with a surface area of 2.0 acres and negligible storage capacity at normal surface elevation 844 feet msl; and (3) a 450-foot-long 30-inch-diameter steel penstock.

Applicant proposes to: (1) Install new headworks and a new trash rack; (2) recondition and/or replace the existing penstock; (3) install a new 108-foot-long 30-inch-diameter steel penstock; (4) construct a new powerhouse containing a generating unit having a rated capacity of 90-kW operated under a 65-foot head and at a flow of 37 cfs; (5) excavate a short trailrace; and (6) install a new 50-foot-long 2,400-volt transmission line.

k. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Project energy would be sold to Public Service Company of New Hampshire. Applicant estimates that the average annual energy output would be 350,000 kWh.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

29a. Type of Application: Preliminary Permit.

b. Project No: 7667–000.

c. Date Filed: October 3, 1983.

d. Applicant: WP, Incorporated.

e. Name of Project: Deep Creek Water Power Project.

f. Location: On Deep Creek near the town of Pysht, in Clallam County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary W. Tripp, 821 East Thomas Street, Seattle, Washington 98102.

i. Comment Date: January 20, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high concrete gravity diversion dam, (2) a 1-acre reservoir with a capacity of 2 acre-feet and a surface elevation of 410 feet; (3) a 5,700-foot-long, 60-inch-diameter pipeline from the diversion dam to a surge tank; (4) a 35-foot-high, 10-foot-diameter surge tank at elevation 380 feet; (5) a 13,600-foot-long, 46-inch-diameter penstock from the surge tank to the powerhouse; (6) a powerhouse with a single generating unit with a capacity of 1,760 kW; (7) a switchyard; and (8) a 4.5-mile-long, 7.2-kV transmission line. The average annual energy production would be 6,164,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which time it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $80,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Clallam County Public Utility District.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

30a. Type of Application: Preliminary Permit.

b. Project No: 7679-000.

c. Date Filed: October 3, 1983.

d. Applicant: Clearwater Hydro.

e. Name of Project: Second Broad River Power Project.

f. Location: Rutherford County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles Gresham, Clearwater Hydro, Route 1, Box 555 Hiwatha Road, Morristown, Tennessee 37814.

i. Comment Date: January 20, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing reservoir with a surface area of 24 acres and a storage capacity of 72 acre-feet at power pool elevation of 760 feet m.s.l.; (2) an existing gravity dam constructed on concrete and rock; (3) a proposed powerhouse containing 3 generating units having a total installed capacity of 350 kW; (4) a proposed 13.8 kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy output would be 2,085,000 kWh.

k. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months to conduct feasibility studies, prepare final design plans and a license application. Applicant estimates the cost for this work would be $13,010.

l. Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for license.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

31a. Type of Application: Preliminary Permit.

b. Project No.: 7259–001.

c. Date Filed: August 1, 1983.

d. Applicant: Aero Construction, Incorporated.

e. Name of Project: Sardis Lake and Dam.

f. Location: Pushmataha County, Oklahoma.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70898.

i. Comment Date: January 23, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed powerhouse containing one generating unit rated at 4 MW; (2) a proposed 12.47 KV transmission line; and (3) appurtenant facilities. The Applicant would utilize an existing dam and lands owned by the U.S. Army Corps of Engineers. The estimated average annual energy output for the project would be 8,500,000 kWh.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months to conduct feasibility studies, prepare final design plans and a license application. Applicant estimates the cost for this work would be $10,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for license.

Competing Applications

A1. *Exemption for Small Hydroelectric Power Project under 5MW Capacity*—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. *Exemption for Small Hydroelectric Power Project under 5MW Capacity*—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. *License or Conduit Exemption*—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. *License or Conduit Exemption*—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit:* Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. *Preliminary Permit:* No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. *Preliminary Permit*—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or

small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service or Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commision are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal request for comments will be

made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 25, 1983.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-32038 Filed 11-29-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30233; PH-FRL 2479-6]

Certain Companies; Applications To Register Pesticide Products Containing New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of the Federal Instectcide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 30, 1983.

ADDRESS: Written comments, identified by the document control number [OPP-30233] and the file symbol, should be submitted by mail, attention of the Product Manager in each application at the following address: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person deliver comments to: Rm 236, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: The product manager at the telephone and room number cited.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Applications Received

1. File Symbol: 476-EEEE. Applicant: Stauffer Chemical Co., 1200 S. 47th St., Richmond, CA 94804. Product name: Racer™ 2-E Herbicide. Herbicide. Active ingredient: 1-[*m*-trifluoromethylphenyl]-3-chloro-4-chloromethyl-2-pyrrolidone 23.2%. Proposed classification/Use: General. For survace application in non-crop areas. Type registration: Conditional. (Product Manager (PM) 25-Robert Taylor, Rm. 245, CM#2, (703-557-1800)).

2. File Symbol: 48099-R. Applicant: Bear Country Products, 144 Commercial St., Sunnyvale, CA 94086. Product name: Bear Skunker. Bear Repellent. Active ingredients: Diethylsulfide 7.17%, 1-butanediol 42.83%, and methyl alcohol 50%. Proposed classification/Use: General. For deterring attacking bears. (PM 16-William Miller, Rm. 265, CM#2, 703-557-2600)).

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: November 21, 1983.

Robert V. Brown,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-31922 Filed 11-29-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-350; PH-FRL 2479-5]

Certain Companies; Pesticide and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities .

ADDRESS: Written comments should be submitted by mail, attention of the Product Manager (PM) name in each petition, at the following address: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number [PF-350] and the petition number. All written comments filed in response to the notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The Product Manager at the telephone and room number given in each petition.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide and feed additive petitions relating to the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

I. Initial Filings

1. *PP 4F2969.* American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. Proposes amending 40 CFR 180.400 by establishing tolerances for the residues of the insecticide flucythrinate [(±)-cyano(3=phenoxyphenyl)methyl(+)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate] in or on the commodity cabbage at 1.5 parts per million (ppm). The proposed analytical method for determining residues is by gas chromatography. (Timothy Gardner, PM-17, CM#2, Rm. 207, 703-557-2690).

2. *PP 3F2966.* Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide acetochlor [2-chloro-*N*-(ethoxymethyl)-6'-ethyl-o-acetotoluidide] in or on the following commodities:

Commodities	Parts per million (ppm)
Corn (fodder)	0.1
Corn (forage)	0.8
Corn (grain)	0.1
Eggs	0.02
Milk	0.02
Peanuts (hulls)	2.5
Peanuts (nuts)	0.4
Soybeans (forage)	5.0
Soybeans (grain)	0.4
Soybeans (hay)	5.0
Sorghum grain (fodder)	3.0
Sorghum grain (forage)	3.0
Sorghum grain (grain)	0.2
Tissue of beef chicken and hogs	0.02

The proposed analytical method for determining residues is grass chromatography using a nitrogen specific detector. (Robert Taylor, PM–25, CM#2, Rm. 253, 703–557–1800).

II. Amended Petitions

EPA issued a notice published in the **Federal Register** of September 7, 1983 (48 FR 40432) which announced the filing of pesticide petitions (PP) 3F2936 and feed additive petition (FAP) 3H5406 for residues of the insecticide (±) alpha-cyano-(3-phenoxyphenyl) methyl (±) *cis, trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate (cypermethrin) in or on certain commodities.

The notice is amended to show a joint filing of the petitions by ICI Americas, Inc., Agricultural Chemicals Division, Wilmington, DE 19897, and FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103 as follows:

1. *PP 3F2936.* ICI Americas, Inc., Agricultural Chemicals Division, Wilmington, DE 19897, and FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR Part 180 by establishing tolerances for the residues of the insecticide cypermethrin in or on the commodity soybeans at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (Timothy A. Gardner, PM–17, Rm. 207, 703–557–2690).

2. *FAP 3H5406.* ICI Americas, Inc., Agricultural Chemicals Division, Wilmington, DE 19897, and FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia PA 19103. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide cypermethrin in or on the commodity soybeans hulls at 1.0 ppm and soybean oil and soapstock at 0.2 ppm. (Timothy A. Gardner, PM–17, Rm. 207, 703–557–2690).

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2); (409(b)(5), 72 Stat. 1786, (21 U.S.C. 348)))

Dated: November 21, 1983.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-31923 Filed 11-29-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-348; PH-FRL 2477-2]

Mobay Chemical Corp.; Pesticide Petition; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice proposes to amend the tolerance expressions for residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites in or on certain commodities.

ADDRESS: By mail submit written comments to: Program Management and Support Division (TS–757C), Attn: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 229, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments, identified by the document control number [PF–348] and the petition number 2F2665 may be submitted to the Agency by December 30, 1983 for consideration in establishing tolerances for the fungicide. All written comments filed in response to this notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, PM–21, telephone number (703–557–1900).

SUPPLEMENTARY INFORMATION: In FR Doc. 82–13922, published in the **Federal Register** of May 26, 1982 (47 FR 23021), EPA announced that Mobay Chemical Corp., PO Box 4913, Hawthorne Road, Kansas City, MO 64120 had submitted pesticide petition 2F2665 that proposed establishment of tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on certain raw agricultural and meat commodities.

The tolerance expression appearing on page 23021 is amended to indicate the following tolerance expressions:

1. In or on the agricultural commodities: "By proposing tolerances be established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol".

2. In or on animal derived commodities: "By proposing tolerances be established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide)."

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

Dated: November 16, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-31588 Filed 11-29-83; 8:45 am]

BILLING CODE 6560-50-M

[PP 9G2200/T434; PH-FRL 2479-1]

Pirimiphos-Methyl; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the insecticide pirimiphos-methyl, and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by ICI Americas, Inc.

DATE: These temporary tolerances expire October 25, 1984.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office Location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2386).

SUPPLEMENTARY INFORMATION: ICI Americas, Inc., Regulatory Affairs Department, Wilmington, DE 19897, has requested, in pesticide petition PP 9G2200 the establishment of temporary tolerances for the combined residues of the insecticide pirimiphos-methyl, *O*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] *O,O-dimethyl-phosphorothioate, the metabolite O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethylphosphorothioate and in free

and conjugated form, the metabolites 2-dimethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol and 2-amino-6-methyl-pyrimidin-4-ol, in or on the raw agricultural commodities corn at 10.0 parts per million (ppm), grain sorghum at 10.0 ppm, rice at 15.0 ppm and wheat at 10.0 ppm. A related food additive regulation has established a tolerance for pirimiphos-methyl in rice and wheat milling fraction at 50.0 ppm and rice hulls at 60.0 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance woth the provisions of the experimental use permit 10182-EUP-17 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI Americas, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the food and Drug Administration.

These tolerances expire October 25, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: November 17, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-31835 Filed 11-29-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 83-1253, et al.; File No. BP-820305AO, et al.]

Kathryn C. Appleton, et al.; Hearing Designation Order

In re applications of Kathryn C. Appleton, Jefferson, Georgia, Req: 880 kHz, 5 kW, D (MM Docket No. 83-1253, File No. BP-820305AO); David T. Murray, Colonial Heights, Tennessee, Req: 870 kHz, 5 kW, D (MM Docket No. 83-1254, File No. BP-820820AA); J. Barry Williams, White Pine, Tennessee, Req: 880 kHz, 1 kW, DA, D (MM Docket No. 83-1255, File No. BP-820820AO). For Construction Permit.

Adopted: November 15, 1983.

Released: November 25, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) The above-captioned mutually exclusive applications for new AM broadcast stations; (b) a petition to deny the David T. Murray application filed by Tri-Cities Radio Corp.; (c) a petition to dismiss the J. Barry Williams application filed by East Tennessee Broadcasting Corporation; and (d) related pleadings.

2. *Kathryn C. Appleton.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that this applicant has published the required notice. Kathryn C. Appleton must therefore publish the required local notice, if she has not already done so, and file the required information with the Administrative Law Judge within thirty days of the release of this Order.

3. Analysis of the financial information submitted by this application shows that she proposes to construct the station and operate for three months at a total cost of $19,300. We are unable to determine if the applicant's estimated operating costs are reasonable, however, since she has not itemized them as required by the Form 301 on which the application was filed. Moreover, we cannot determine whether adequate funds are available. To cover her estimated expenses, the applicant has $5,700 cash and a $27,000 bank loan commitment. In addition, she asserts that she will receive $15,000 from AM International on May 1, 1982, will sell a building lot valued at $6,000, and will borrow $28,000 on "other real estate" and $52,000 on stocks. Finally, a letter from James B. Childress, President of Childress Radio Group, states that if no financial institution will "make the needed loan" he (Mr. Childress) will lend Appleton the money or buy the stock himself.

4. We cannot credit the applicant with most of these funds, however. No personal financial statement or balance sheet for Mr. Childress is contained in the record, and Mr. Childress does not state the amount of money he would commit to a loan or to the purchase of the stock. Under these circumstances no credit can be given the applicant for the Childress loan/purchase commitment. Moreover, the building lot to be sold, and the "other real estate" and stock the applicant proposes to utilize for security on its loans, are not described in the application or otherwise demonstrated to be available for this purpose, permitting no funds to be attributed to these sources. Since the applicant has not adequately established its operating costs or the availability of sufficient funds to meet these costs, a financial issue will be specified.

5. **David C. Murray.** Tri-Cities Radio Corporation (Tri-Cities), licensee of station WJCW, Johnson City, Tennessee, timely filed a petition to deny the Murray application. Tri-Cities alleged that the proposal would cause objectionable interference to its station as well as to an FAA navigation beacon station at the Tri-Cities Airport. In addition, petitioner asserted that there was a potential for an intermodulation product between the Murray proposal and the FAA beacon which would cause interference to station WGOC, Kingsport, Tennessee. Subsequently, on October 14, 1983 the applicant, as the result of discussions between it and petitioner, filed a petition for leave to amend and a minor amendment to its application which purported to eliminate any objectionable interference to WJCW. Tri-Cities concurrently filed a request to dismiss its petition to deny.

6. The amendment proposes to move the antenna site which was originally 1.96 miles for the WJCW site to a point

3.5 miles north of the WJCW site. We have reviewed the amendment and find the proposal meets the protection requirements of the Commission's Rules. We further find that the Murray proposal, as amended, will cause no prohibited interference to station WJCW, or to any other broadcast station. Concerning the allegation that the proposal will cause interference to an FAA beacon, we note that the proposal has received FAA approval and the allegation is moot. Since the amendment cures a potentially disqualifying defect, confers no comparative advantage on Murray, and will prejudice no other applicant, we will grant the petition for leave to amend and accept the amendment on condition that it not be used to enhance the comparative position of Murray. *Gross Broadcasting Corp.*, 46 RR 2d 1091 (1979); *Azalea Corp.*, 31 F.C.C. 2d 561 (1971). The Tri-Cities petition to deny is now moot and we will grant its dismissal request.

7. **J. Barry Williams.** In seeking dismissal of the J. Barry Williams proposal, East Tennessee Broadcasting Corp., cites certain confusion surrounding the application's filing. For reasons which cannot be explained, the application (which is dated August 19, 1982) is stamped partially as having been received by the Commission on August 20, 1982—the cut-off date for proposals in this group—and partially as having been received on September 17, 1982. It seems to us under the circumstances more equitable to accept the earlier filing date, there being a clear indication of a submission at this time and no indication of intended misconduct on Williams' part. Hence the petition will be denied.

8. Except as indicated by the issues below, all three applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

9. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the application of Kathryn C. Appleton:

(a) Whether the applicant has provide a realistic estimate of her proposed operating costs,

(b) Whether the applicant has available sufficient funds to meet the proposed construction and operating costs, and

(c) Whether in light of the above, the applicant is financially qualified to construct and operate as proposed.

2. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural services to such areas and populations.

3. To determine in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

10. It is further ordered, that Kathryn C. Appleton comply with the local notice requirements of § 73.3580 of the Commission's Rules, if she has have not done so, and certify as to compliance with the Administrative Law Judge within thirty (30) days of the release of this Order.

11. It is further ordered, that the petition for leave to amend filed by David T. Murray is granted, and the amendment contained therein is accepted subject to the conditions set herein.

12. It is further ordered, that the petition to deny filed by Tri-Cities Radio Corporation is dismissed as moot.

13. It is further ordered, that the petition to dismiss filed by East Tennessee Broadcasting Corporation is denied.

14. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this order.

15. It is further ordered, that pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the rule, and shall advise the Commission of the publication of the notices as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-31950 Filed 11-29-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 83-1245, et al.; File Nos. BPCT-830630KH]

Augusta Family Television, Ltd., et al.; Hearing Designation Order

In re applications of Norma Crowder and Randall L. Rader d/b/a, Augusta Family Television, Ltd., Augusta, Georgia (MM Docket No. 83-1245, File No. BPCT-830630KH) Independent Masters, Ltd., Augusta, Georgia (MM Docket No. 83-1246, File No. BPCT-830701KF) Prime Time Television, Inc., Augusta, Georgia (MM Docket No. 83-1247, File No. BPCT-830705KE) Carolina Christian Broadcasting, Inc., Augusta, Georgia (MM Docket No. 83-1248, File No. BPCT-830705KF) Southern Media Systems, Inc., Augusta, Georgia (MM Docket No. 83-1249, File No. BPCT-830705KG) Ro-Mar Communications, Inc., Augusta, Georgia (MM Docket No. 83-1250, File No. BPCT-830705KH) Augusta 54 Broadcasting Company, Augusta, Georgia (MM Docket No. 83-1251, File No. BPCT-830705KI) Orion Broadcast of Augusta, Inc.,[1] Augusta, Georgia (MM Docket No. 83-1252, File No. BPCT-830705KJ), For Construction Permit.

Adopted: November 17, 1983.

Released: November 25, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 54, Augusta, Georgia.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, for the purposes of comparison, the area and

[1] Applicant amended its application on August 23, 1983, to change name from Orion Broadcast Group, Inc.

population which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been made that the tower height and location proposed by Prime Time Televison, Inc. would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Prime Time Television, Inc., Ro-mar Communications, Inc. and Augusta 54 Broadcasting Company have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

5. Independent Masters, Ltd. indicates that it has not yet completed its financial arrangements and that certification would follow upon completion of the arrangements. To date, we have not received certification. Accordingly, the applicant will be given 20 days from the date or release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. FCC Form 301, Section II (Other Broadcast Interests), item 8(b), questions whether any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to the application has any interest in or connection with any other broadcast station or pending broadcast application. Carolina Christian Broadcasting, Inc. (CCB) did not answer item 8(b). Accordingly, CCB will be required to submit an amendment containing its answer to item 8(b), to the presiding Administrative Law Judge, within 20 days after the release date of this Order.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Prime Time Television, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that, the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, that Prime Time Television, Inc., Ro-mar Communications, Inc. and Augusta 54 Broadcasting Company shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the release date of this Order.

11. It is further ordered, that Independent Masters, Ltd. shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

12. It is further ordered, that Carolina Christian Broadcasting, Inc. shall submit an amendment containing its answer to item 8(b), FCC Form 301, Section II, to the presiding Administrative Law Judge, within 20 days after the release of this Order.

13. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and party 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 to present evidence on the issues specified in this Order.

14. It is further ordered, that, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-31949 Filed 11-29-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 83-1238, et al.; File Nos. BP-811026AC, et al.]

Largo Broadcasting Co., et al.; Hearing Designation Order

In re applications of Largo Broadcasting Company, WSST(AM), Largo, Florida, Has: 800 kHz, 250W, D, Req: 820 kHz, 1 kW, 50 kW-LS, DA-2, U (MM Docket No. 83-1238, File No. BP-811026AC) Spanish Family Radio Corporation, Sweetwater, Florida, Req: 830 kHz, 1kW, DA-1, U (MM Docket No. 83-1239, File No. BP-811229AJ) Hercules Broadcasting Company, Holly Hill, Florida, Req: 820 kHz, 1 kW, 5 kW-LS, DA-2, U (MM Docket No. 83-1240, File No. BP-820301AO) Cornerstone Broadcasting, Inc., Plant City, Florida, Req: 830 kHz, 1 kW, 10 kW-LS, DA-N, U (MM Docket No. 83-1241, File No. BP-820301AQ) Big Time Radio, Inc., Hialeah, Florida, Req: 830 kHz, 1 kW, DA-1, U (MM Docket No. 83-1242, File No. BP-820301AR) Santa Maria Radio, Inc., Pine Hills, Florida, Req: 820 kHz, 1kW, 10 kW-LS, DA-N, U (MM Docket No. 83-1243, File No. BP-820301AS) J&K Broadcasters, East Fort Myers, Florida, Req: 830 kHz, 1 KW, 5 kW-LS, DA-N, U (MM Docket No. 83-1244, File No. BP-820301AT), For Construction Permit.

Adopted: November 15, 1983.

Released: November 25, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Largo Broadcasting Company (Largo), J&K Broadcasters (J&K), Cornerstone Broadcasting, Inc. (Cornerstone), Santa Maria Radio, Inc. (Santa Maria), Big Time Radio, Inc. (Big Time), Hercules Broadcasting Company (Hercules), and Spanish Family Radio

Corporation (Spanish Family). Also before the Commission are petitions to deny an informal objections filed by the various applicants [1] and outside parties, and pleadings responsive thereto. For purposes of convenience, we will consider the requested issues on an applicant-by-applicant basis rather than considering each petition in turn.

2. *Largo.* The petition to deny Largo's application, filed by Forus Communications of Florida, Inc., licensee of AM station WTIS, Tampa, Florida, alleged that Largo's nighttime proposal failed to meet the business district and nighttime interference-free coverage criteria of § 73.24(j) of the Commission's Rules; Forus also stated that the proposal failed to meet the blanketing provision of § 73.24(g), and that Largo's intent in requesting its modification of facilities was to circumvent the Commissions surburban community policy by extending the station's 25 mV/m and 5 mV/m contours to cover the business district and residential areas respectively of Tampa and St. Petersburg. In addition, a petition for imposition of condition was filed by Capital Cities Communications, Inc., licensee of WBAP(AM), Fort Worth, Texas requesting the imposition of various conditions on the construction permit of Largo, should that application be granted, to insure that prohibited interference not be caused within WBAP's nighttime 0.5 mV/m 50% skywave secondary service area.

3. In its response to the petitions, Largo submitted an amendment dated March 31, 1982 which proposed a relocation of its facilities to a site in the northwest corner of Largo. This amendment grants full protection to WBAP and provides full coverage to the business district and residential area of Largo, thus rendering that portion of the pleadings moot. In addition, the amendment has eliminated the blanketing problem and the necessity for a waiver of § 73.24(g) present in the original proposal. Largo notes in this regard that 6,533 persons would reside within the 1 mV/m contour of the amended proposal, a figure constituting far less than 1% of the 1,150,112 people located within the 25 mV/m contour. Thus, the requirement of § 73.24(g) is satisfied.

4. With respect to the surburban community aspect of Forus' pleading, we have recently abolished the suburban community policy. *Report and Order,* 53 RR 2d 681 (1983). In taking this action, we recognized that this policy, which attempted to ascertain an applicant's intent with respect to the community to be served, no longer served the public interest and should be eliminated. At the same time, we pointed out, however, that Section 312(a)(1) of the Communications Act of 1934, as amended, empowers us to revoke a station license for false statements made in applications and that the requirement of candor and veracity in all dealings with the Commission is mandated by the Communications Act and by our rules. *RKO General, Inc., v. FCC,* 670 F.2d 215 (D.C. Cir. 1981). We consider the stating of one community of license, while intending to render primary service to another community, to fail the candor and veracity test. *Report and Order, supra,* at 688. In addition, we noted that "we believe that the risk of a renewal challenge for failure *actually* to serve the designated community constitutes a more effective regulatory tool than utiiization in advance of guidelines and factors that are inexact in divining intent." *Id.* at 697. Thus, we will not consider Forus' allegation that Largo's primary intent in proposing its power increase is to serve the larger communities of Tampa and St. Petersburg.

5. *J&K.* A petition to return application as unacceptable for filing was filed by Hercules Broadcasting Company, and a motion to dismiss application was filed by Big Time Radio, Inc., each an applicant in this proceeding.[2] Both parties allege that J&K's proposed community of license, East Fort Myers, Florida, does not constitute a separate and distinct community. Section 73.1120 of the Commission's Rules requires that each AM broadcast station be licensed to the principal community or other political subdivision which it primarily serves. From the information before us, we cannot determine whether East Fort Myers constitutes a principal community or political subdivision for purposes of our rules. Thus, for example, Hercules contends that the maps submitted with the engineering portion of the J&K application reflect no East Fort Myers nor any delineated boundaries. Hercules also notes that the U.S. Census does not list East Fort Myers as a separate community.[3] Big Time Radio, for its part, alleges among other things that East Fort Myers ceased to be a separate entity on December 29, 1925 when it was annexed to, and became in integral part of, Fort Myers. In response, J&K contends that East Fort Myers consists of a tangible unincorporated area to the northeast of Fort Myers but outside its corporate city limits, including an unincorporated area known as "Tice". We cannot, on the basis of the information and allegations before us, resolve the question raised. Consequently, an appropriate issue will be specified.

6. *Spanish Family.* A petition to return or dismiss application and a petition to deny were filed against the proposed operation of Spanish Family by Susquehanna Broadcasting Company, the licensee of standard broadcast station WQBA, Miami, Florida. Susquehanna alleged that authorization of the proposed Spanish Family antenna (located less than 1,500 feet from the center of the WQBA transmitting location) would prevent WQBA from maintaining its nighttime pattern within Commission limits and would cause severe re-radiation problems. Spanish Family, however, submitted an amendment to its application on February 16, 1983, that proposed a change in transmitter site of slightly more than two miles, thus rendering the Susquehanna petition moot.[4] [5]

7. *Hercules.* A petition to dismiss or deny was filed by Capital Cities Communications, Inc., licensee of AM station WBAP, Fort Worth, Texas, alleging that the proposed Hercules nighttime operation would cause prohibited interference to WBAP within its nighttime 0.5 mV/m 50% skywave contour in contravention of § 73.182 of

[1] We also have received two motions for leave to amend filed by Spanish Family which, because the amendments comply with the Commission's requirement under § 1.65 that each applicant's application be kept current, complete, and accurate, will be granted. Big Time, Santa Maria, Largo, and Hercules have also filed amendments that failed to meet the requirements of § 73.3522 of the Rules. Under § 1.65, however, good cause has been shown for the acceptance of these amendments.

[2] A motion to enlarge issues would normally be filed by the parties after designation for hearing pursuant to § 1.229 of the Commission's Rules. In this instance, however, the pleadings will be considered at this stage of the proceeding because the allegations relate to the alleged failure of J&K to meet our criteria governing the acceptance of proposals for filing.

[3] The fact that the Census Bureau does not list East Fort Myers as a separate community is simply one factor to be considered, although not dispositive. *See FM Assignment, North Naples, Florida,* 41 RR 2d 1549, 1553 (Broadcast Bureau 1977).

[4] On June 28, 1982, Spanish Family filed an amendment contemplating a "major change" of ownership. Under § 73.3571 of our Rules, acceptance of the amendment would have resulted in a new file number being assigned to the proposal, causing it to lose its protected status vis-a-vis the Largo application. As Spanish Family subsequently filed an amendment to its application which reflected its original ownership arrangement, we conclude by implication that the first amendment has been withdrawn.

[5] On December 28, 1982 Spanish Family filed an unexecuted amendment, unacceptable due to the failure to comply with § 73.3512 of our Rules. To the extent that the amendment represents changed circumstances that the applicant is obligated to report to the Commission, the applicant should refile such amendment with the presiding Administrative Law Judge; to the extent that the amendment was filed to improve Spanish Family's comparative position, it cannot be accepted.

the Commission's Rules. In its opposition, Hercules submitted an amendment, dated May 27, 1983, that eliminated the overlap problem and mooted the pleading as a result.

8. *Critical array issues.* It is our policy to consider as being generally stable directional arrays which do not exceed their radiation limits with 1.0 percent current ratio and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree highly unstable. Where arrays exceed their radiation limits within these parameter variations, we will condition a grant accordingly.[6] Our computerized studies here indicate that the Largo and Hercules proposed operations would exceed specified standard radiation values with variations of 1.0 percent current ratio deviation and 1.0 degree phase deviation, but would not do so at the 0.1 levels. Thus, the two proposals fall into the category where stability conditions are called for.

9. *Financial qualifications issues.* Santa Maria and Big Time have submitted certifications of their financial qualifications under Section III of Form 301. These certifications are, however, incomplete. Big Time and Santa Maria have failed to certify under Item 1 that sufficient net liquid assets are on hand or are available from committed sources to construct and, operate the requested facilities for three months without revenue. These applicants must submit an amended Section III financial certification to cure this omission, as indicated below.

10. *Environmental narrative statement issues.* Since the Cornerstone, Big Time and Largo proposals constitute major environmental actions as defined by § 1.1305(a) of the Commission's Rules, the applicants are required to submit the environmental impact information described in § 1.1311 of our Rules. Cornerstone's environmental impact statement fails to include information concerning access roads to the site, power lines, and zoning classifications of the site (if any) including any proceedings before zoning or planning environmental authorities; Largo's environmental impact statement also fails to include any reference to access roads and power lines, information concerning the zoning classification of the site (if any), and fails to state whether construction of the facility has been a source of local controversy in the community; Big Time's environmental statement fails to include any reference to access roads and power lines, zoning classifications, or whether construction has been a source of local controversy.

11. Consequently, Largo, Cornerstone, and Big Time will be required to file within 30 days of the release of this Order amended environmental narrative statements with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

12. *Local notice certification issues.* Applicant for new broadcast stations are required to give local notice of the filing of their applications in accordance with § 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that J&K and Spanish Family have done either. If they have not already done so, J&K and Spanish Family will be required to give local public notice and to file a statement that they have complied with the local public notice requirement with the presiding Administrative Law Judge within 30 days.

13. Except as indicated by the issues specified below, all applicants are qualified to contruct and operate as proposed.[7] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to determining pursuant to Section 307(b) of the Communication Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

14. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental narrative statement is issued with respect to Largo Broadcasting Company, Big Time Radio, Inc, and Cornerstone Broadcasting, Inc. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rule; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether East Fort Myers, Florida, constitutes a community within the context of § 73.1120 of the Commission's Rules.

3. To determine the areas and populations that would receive primary service from each proposal and the availability of other primary aural services to such areas and populations.

4. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

15. It is further ordered, that § 1.1317 of the Commisison's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Largo Broadcasting Company, Big Time Radio, Inc., and Cornerstone Broadcasting, Inc. shall submit the amended environmental narrative required by § 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

16. It is further ordered, that J&K Broadcasters and Spanish Family Radio Corporation comply with local notice provision of § 73.3580 of the Commission's Rules, as discussed in

[6] Where other factors, internal and/or external to the array warrant it, a hearing issue may be specified. Such circumstances, however, have not been established here.

[7] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary on order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

paragraph 12 above, and advise the presiding Administrative Law Judge as to compliance within 30 days of the release of this Order.

17. It is further ordered, that Santa Maria Radio, Inc. and Big Time Radio, Inc. shall file the amended financial certification of Section III, Form 301, discussed in paragraph 9 above, or advise the presiding Administrative Law Judge within thirty (30) days of the release of this Order that certification cannot be made.

18. It is further ordered, that in the event that the J&K Broadcasting, Big Time Radio, Inc., Spanish Family Radio Corporation, or Cornerstone Broadcasting, Inc. proposal is granted, the construction permit shall contain the following condition:

The applicant shall amend its application to protect Dominican Republic station HIJB's 2.5mv/m nighttime interference-free contour if the Dominican Republic has not agreed to apply the terms of the Region 2 agreement in lieu of NARBA.

19. It is further ordered, that in the event that the Hercules Broadcasting Company or Largo Broadcasting Company proposal is granted, the construction permit shall contain the following condition:

The applicant shall amend its application to protect Dominican Republic station HIAZ's 2.5 mV/m nighttime interference-free contour if the Dominican Republic has not agreed to apply the terms of the Region 2 agreement in lieu of NARBA.

20. It is further ordered, that the petition to deny filed by Forus Communications, is denied.

21. It is further ordered, that the petition to return as unacceptable for filing, filed by Hercules Broadcasting Company, and the motion to dismiss filed by Big Time Radio, Inc., are granted to the extent indicated herein, and are denied in all other respects.

22. It is further ordered, that the petition for imposition of condition filed by Capital Cities Communications, Inc., is granted.

23. It is further ordered, that the petition to return or dismiss and the petition to deny filed by Susquehanna Broadcasting Company, are dismissed as moot.

24. It is further ordered, that the petition to dismiss or deny filed by Capital Cities Communications, Inc., is dismissed as moot.

25. It is further ordered, that in the event that the Hercules Broadcasting Company or Largo Broadcasting Company application is granted, the construction permit shall contain the following condition:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degrees phase and 0.1 percent sample current ratio deviation shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array to insure maintenance of the radiated fields within the standard pattern values of radiation. Upon receipt of operating specifications and before issuance of a license, the permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios and sample current ratio deviations for each element of the array along with the final amplifier plate voltage and current, the common point current, and the field strengths at each monitoring point for both the nondirectional and directional nighttime operations for a period of at least thirty days, to demonstrate that the array can be maintained within the specified tolerances.

26. It is further ordered, that the motions for leave to amend and the accompanying amendments filed by Spanish Family Radio Corporation, are granted, and the amendments filed by Big Time Radio, Inc., Santa Maria Radio, Inc., Largo Broadcasting Company, and Hercules Broadcasting Company, are accepted.

27. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

28. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-31948 Filed 11-29-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 for the Shipping Act, 1916, as amended (39 Stat. 733, 763, 75 Stat. 46 U.S.C. 814).

Interested parties may inspect and may request of copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Martime Commission, Washington, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Ageement No. T-4149.

Title: City of Los Angeles and Maritime Services International, Terminal Lease Agreement.

Parties: City of Los Angeles (City) and Maritime Services International (MSI).

Synopsis: Agreement No. T-4149 provides that the City will lease to MSI 13.40 acres at Berths 178-181, Wilmington, California to be used for the operation of a marine terminal. The agreement will run for two years. Compensation for use of the premises is 100% to the Port of Los Angeles until a minimum annual guarantee of $502,613 is reached. Thereafter, 50% of Tariff Charges will be withheld by MSI.

Filing Party: Frank Wagner, Deputy City Attorney, City of Los Angeles, P.O. Box 151, San Pedro, California 90731-0151.

Ageement No. 10045-10.

Title: South Atlantic and Gulf-Panama and Costa Rica Rate Agreement.

Parties: Coordinated Caribbean Transport, Inc., Concorde/Nopal Line, Sea-Land Service, Inc.

Synopsis: Agreement No. 10045-10 would permit the parties to perform alternate port service.

Filing Party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York.

Dated: November 25, 1983.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-31947 Filed 11-29-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Holding Company, et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Community Holding Company*, Inez, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Inez Deposit Bank, Inez, Kentucky. Comments on this application must be received not later than December 23, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Peoples First National Bancshares, Inc.*, North Miami Beach, Florida; to become a bank holding company by acquiring at least 95 percent of the voting shares of Peoples First National Bank, North Miami Beach, Florida. Comments on this application must be received not later than December 23, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Kewaunee County Banc-Shares, Inc.*, Kewaunee, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of State Bank of Kewaunee, Kewaunee, Wisconsin. Comments on this application must be received not later than December 21, 1983.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Benton State Bankshares, Inc.*, Benton, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Benton State Bank, Benton, Arkansas. Comments on this application must be received not later than December 23, 1983.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **ADM Bancorp, Inc.**, Kansas City, Kansas; to become a bank holding company by acquiring 90.11 percent of the voting shares of Arrowhead State Bank of Kansas City, Kansas. Comments on this application must be received not later than December 23, 1983.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Kerens Financial, Inc.*, Kerens, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Kerens, Kerens, Texas. Comments on this application must be received not later than December 23, 1983.

Board of Governors of the Federal Reserve System, November 23, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-31970 Filed 11-29-83; 8:45 am]

BILLING CODE 6210-01-M

New Hampshire Savings Bank Corp.; Formation of a Bank Holding Company

New Hampshire Savings Bank Corp., Concord, New Hampshire, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) for the prior acquisition of 100 percent of the voting shares of New Hampshire Savings Bank, Concord, New Hampshire, a guaranty savings bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

New Hampshire Savings Bank Corp., Concord, New Hampshire, has also 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 retain two nonbanking subsidiaries: New England Financial Resources, Inc., York Harbor, Maine (NEFR) and Real Estate Consultants on New England, Inc., Concord, New Hampshire (REC). NEFR provides mortgage banking services from four existing offices: York Harbor, Maine (residential real estate lending) serving coastal New Hampshire and south coastal Maine; Portland, Maine (residential real estate lending) serving central coastal Maine; Topsfield, Massachusetts (residential real estate lending) serving northeastern Massachusetts; and Boston, Massachusetts (commercial real estate lending) serving Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island and Vermont. NEFR plans to establish a fifth office in Nashua, New Hampshire, to engage in residential real estate lending, serving south central New Hampshire. REC is engaged in the business of conducting appraisals of real property in connection with the lending activities of New Hampshire Savings Bank. This activity is conducted from an office in Concord, New Hampshire, serving the State of New Hampshire.

Applicant also seeks permission to indirectly retain four nonbanking subsidiaries of New Hampshire Savings Bank (NHSB): New England Capital Corporation, Avon, Connecticut, which engages in commercial equipment leasing and financing from offices in Avon, Connecticut, and Concord, New Hampshire, serving the United States; Consulting and Systems Management, Inc., Concord, New Hampshire, which leases teller and data processing equipment to NHSB and also provides data processing services to NHSB. These activities are provided from an office in Concord, New Hampshire, serving the State of New Hampshire; W-E Management Co., Concord, New Hampshire, which engages in the provision of management services to five banks in connection with a foreclosure workout of loans made to Waterville Estates, Campton and Thornton, New Hampshire. This activity is conducted from an office in Concord, New Hampshire, servng the State of New Hampshire, and Pocketbank, Inc., Manchester, New Hampshire, which provides an electronic switch service to seven participating New Hampshire depository institutions. The service allows access by customers of such institutions to various automated teller machines throughout New Hampshire. This activity is primarily conducted from an office in Manchester, New Hampshire, serving the State of New Hampshire.

Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce

benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Applicant also seeks prior approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire up to 100 percent of the common stock of Rockingham County Trust Company, Salem, New Hampshire. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than December 23, 1983.

Board of Governors of the Federal Reserve System, November 23, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-31973 Filed 11-29-83; 8:45 am]

BILLING CODE 6210-01-M

Titonka Bancshares, Inc.; Formation of a Bank Holding Company

Titonka Bancshares, Inc., Titonka, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent of the voting shares of Titonka Savings Bank, Titonka, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Titonka Bancshares, Inc., Titonka, Iowa, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Boyken Insurance Agency, Inc.

Applicant states that the proposed subsidiary would engage in the activities of general insurance in a community that has a population not exceeding 5,000 persons. These activities would be performed from offices of Applicant's subsidiary in Titonka, Iowa and the geographic areas to the served are Kossuth, Winnebago and Hancock Counties in Iowa. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than December 23, 1983.

Board of Governors of the Federal Reserve System, November 23, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-31971 Filed 11-29-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Security Pacific Corp.; Proposed de Novo Nonbank Activities by Bank Holding Companies

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California (finance and credit life and group credit disability insurance activities; Connecticut): To engage through its subsidiary, Security Pacific Finance Corp. of Granite State dba Security Pacific Finance Corp. in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or consumer finance company and acting as broker or agent for the sale of credit life insurance, and group life and disability insurance sold in connection with real estate mortgage loans, such insurance activities being permitted pursuant to Section 601(A) of Title VI of the Garn-St Germain Act. These activities would be conducted from an office of Security Pacific Finance Corp. of Granite State dba Security Pacific Finance Corp. located in Stamford, Connecticut serving the State of Connecticut and would constitute a relocation of an existing office of Security Pacific Finance Corp. of Granite State dba/Security Pacific Finance Corp. which is currently located in New Britain, Connecticut. Comments on this application must be received not later than December 25, 1983.

2. *Security Pacific Corporation*, Los Angeles, California (finance and credit

life and group credit disability insurance activities; Connecticut): To engage through its subsidiaries, Security Pacific Finance Corp. of Granite Sate dba Security Pacific Finance Corp. and Security Pacific Finance Corp. of Connecticut in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or consumer finance company and acting as broker or agent for the sale of credit life insurance, and group life and disability insurance sold in connection with real estate mortgage loans, such insurance activities being permitted pursuant to Section 601(A) of Title VI of the Garn-St Germain Act. These activities would be conducted from an office of Security Pacific Finance Corp. of Granite State dba/Security Pacific Finance Corp. and Security Pacific Finance Corp. of Connecticut located in Fairfield, Connecticut. The geographic area to be served will be the State of Connecticut. Comments on this application must be received not later than December 25, 1983.

Board of Governors of the Federal Reserve System, November 23, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-31972 Filed 11-29-83; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee, Domestic Policy Directive of October 4, 1983

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on October 4, 1983.[1]

The following domestic policy directive was issued to the Federal Reserve bank of New York:

The information reviewed at this meeting suggests that real GNP continued to grow rapidly in the third quarter, although the rate of expansion moderated from that in the second quarter. Industrial production and employment increased appreciably further in August, following large gains in previous months, and the civilian unemployment rate remained at 9.5 percent. After rising sharply in the spring, growth in consumer spending has moderated substantially. Housing starts rose in August but permits turned down. Data on new orders and shipments generally continued to indicate strength in the demand for business equipment. Producer and consumer prices increased somewhat more in August than in other recent months, but over the first eight months of the year average prices and the index of average hourly earnings have risen more slowly than in 1982.

After slowing substantially in July, growth in M2 remained at a reduced pace over the August-September period, while expansion in M3 picked up. Through September M2 is estimated to be at a level in the lower portion of the Committee's range for 1983 and M3 in the upper portion of its range. Growth in M1 decelerated considerably further in August-September and moved within the Committee's monitoring range for the second half of the year. Interest rates have declined somewhat since mid-August.

The foreign exchange value of the dollar, as measured by its weighted average value against major foreign currencies, has fluctuated within a relatively narrow range since mid-August. The U.S. foreign trade deficit rose substantially in July-August from the second-quarter rate, reflecting a further increase in imports of a broad range of goods.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to a sustainable pattern of international transactions. At its meeting in July the Committee reconsidered the growth ranges for monetary and credit aggregates established earlier for 1983 in furtherance of these objectives and set tentative ranges for 1984. The Committee recognized that the relationships between such ranges and ultimate economic goals have become less predictable; that the impact of new deposit accounts on growth of the monetary aggregates cannot be determined with a high degree of confidence; and that the availability of interest on large portions of transaction accounts may be reflected in some changes in the historical trends in velocity.

Against this background, the Committee at its July meeting reaffirmed the following growth ranges for the broader aggregates: for the period from February-March of 1983 to the fourth quarter of 1983, 7 to 10 percent at an annual rate for M2; and for the period from the fourth quarter of 1982 to the fourth quarter of 1983, 6½ to 9½ percent for M3. The Committee also agreed on tentative growth ranges for the period from the fourth quarter of 1983 to the fourth quarter of 1984 of 6¼ to 9½ percent for M2 and 6 to 9 percent for M3. The Committee considered that growth in M1 in a range of 5 to 9 percent from the second quarter of 1983 to the fourth quarter of 1983, and in a range of 4 to 8 percent from the fourth quarter of 1983 to the fourth quarter of 1984, would be consistent with the ranges for the broader aggregates. The associated range for total domestic nonfinancial debt was reaffirmed at 8½ to 11½ percent for 1983 and tentatively set at 8 to 11 percent for 1984.

In implementing monetary policy, the Committee agreed that substantial weight would continue to be placed on the behavior of the broader monetary aggregates. The behavior of M1 and total domestic nonfinancial debt will be monitored, with the degree of weight placed on M1 over time dependent on evidence that velocity characteristics are resuming more predictable patterns. The Committee understood that policy implementation would involve continuing appraisal of the relationships between the various measures of money and credit and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

The Committee seeks in the short run to maintain the slightly lesser degree of reserve restraint sought in recent weeks. The action is expected to be associated with growth of M2 and M3 at annual rates of around 8½ percent from September to December, consistent with the targets established for these aggregates for the year. Depending on evidence about the strength of economic recovery and other factors bearing on the business and inflation outlook, lesser restraint would be acceptable in the context of a significant shortfall in growth of the aggregates from current expectations, while somewhat greater restraint would be acceptable should the aggregates expand more rapidly. The Committee anticipates that M1 growth at an annual rate of around 7 percent from September to December will be consistent with its fourth-quarter objectives for the broader aggregates, and that expansion in total domestic nonfinancial debt would remain within the range established for the year. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, November 22, 1983.

Stephen H. Axilrod,

Secretary.

[FR Doc. 83-31909 Filed 11-29-83; 8:45 am]

BILLING CODE 6210-01-M

[1] The Record of policy actions of the Committee for the meeting of October 4, 1983, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 81D-0214 and 83D-0305]

Notice of Availability of Guidelines; Target Animal Safety for New Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidelines developed by its Bureau of Veterinary Medicine (BVM) concerning evaluation of the safety of new animal drugs to the target animal species. Interested persons were

invited to review the draft guidelines and submit written comments.

ADDRESS: Written comments and requests for single copies of the guidelings (identified with the docket numbers found in brackets in the heading of this document) to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD. 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 9, 1982 (47 FR 5939), FDA announced the availability of draft guidelines to aid sponsors of new animal drugs in developing protocols for studies designed to establish target animal safety; this notice was issued under § 10.90(b) of the administrative practices and procedures regulations (21 CFR 10.90(b)). Comments were invited to June 4, 1982. In the **Federal Register** of June 4, 1982 (47 FR 34439), the period for comment was extended to September 3, 1982.

Twenty-eight comments were received from drug manufacturers, professional associations, government organizations, and interested individuals. A summary of the significant comments and the agency's responses are as follows:

1. Several comments indicated that "toxic syndrome identification" is an unusual and unrealistic concept and that "toxic syndrome identification" required the unnecessary death of large numbers of the target animals. Numerous comments suggested that selection of an upper limit for the dosage tested in the "toxic syndrome identification" for a drug with a wide margin of safety is not appropriate.

The agency concludes that the terminology "toxic syndrome identification" was frequently misunderstood by the comments. The terminology "drug tolerance test" is used more commonly to describe studies which characterize the target animal response to a toxic dose(s) of drug. Therefore, the agency has adopted the term "drug tolerance test" in the guidelines. Generally, an adequate drug tolerance test can be conducted with no more than four animals, with the specific number of animals dependent upon adequate documentation of toxicity signs. The observation of the toxic effect in the drug tolerance test may aid in focusing target animal toxicity studies and subsequently in developing proper labeling for the marketed drug.

Further, the agency agrees with the need for an alternative to the drug tolerance test for drugs with a wide margin of safety. In agreement with the objective of reasonable and meaningful data requirements, the guidelines incorporate an alternative study based on the drug's use level and duration of administration. The designated drug level and duration of administration are to be consistent with a reasonable degree of effort to establish the signs of toxicity.

2. Numerous comments suggested changes and raised questions on the section of Chapter VII entitled "Anti-mastitis products toxicity studies."

This section has been removed from the guidelines and replaced with a reference to the BVM's "Guidelines for the Evaluation of Antimicrobial Drugs for Intramammary Infusion" for the type of studies needed to establish safety of intramammary infusions in the target species.

3. Several comments stated that the guidelines contained a considerable number of repetitious sections.

The agency agrees with these comments. The toxic syndrome identification (now designated "drug tolerance test") section has been removed from each of the chapters for the different animal species. It is now located in a separate chapter entitled "Drug Tolerance Test." Similarly, the section entitled "Statistical Considerations," previously repeated in each chapter for different species of animals, is now a separate section in Chapter I "Introduction."

The sections entitled "Toxicity Study" and "Breeding Animal Studies" have been kept in each of the chapters for different species to assist interested persons. There are variations in the addenda to the chapters for different species.

4. Several comments noted the excessive amount of detailed information required in the section entitled "Breeding Animal Studies."

The agency agrees that the detailed information is more appropriate for specific protocols than for general guidance. Accordingly, the detailed information has been removed.

5. Several comments questioned the variations among species in the manner in which toxicity studies are to be conducted in diseased animals, in drug levels to be used, and in the duration of the studies.

The agency agrees and has appropriately clarified the guidelines. Uniform requirements for test animals, dose level options, and duration of drug administration are provided in the revised guidelines for all species except poultry.

6. Two comments questioned the differences between the guidelines for poultry and those for the mammalian species.

As stated in the February 9, 1982 notice of availability for the draft guidelines, "The draft is a compilation in a single document of several safety data guidelines for the following target animal species: dogs and cats, horses, ruminants, swine, and poultry. These guidelines reflect current scientific principles, and most of these guidelines have been developed over the years as a result of FDA commenting on sponsor protocols." The poultry guidelines continue to address adequately the safety of a drug intended for use in poultry. That is, because there are significant physiological and anatomical differences in poultry, there are variations in the parameters for testing of animal safety. Additionally, drugs used in poultry are not intended for effective treatment of the individual animal; their success is measured by the effective treatment or control of disease in the flock. For certain parameters, therefore, the flock (group) represents the experimental unit.

7. Numerous comments suggested that toxicology and metabolism data in laboratory animals, where applicable, may be extrapolated to target animals so that testing of target animals may be reduced or minimized.

The agency utilizes toxicologic data, pharmacologic data, and other relevant information available on the subject drug when considering the safety studies in the target species. To clarify BVM's policy on the use of these data, a separate section entitled "Utility of Laboratory Animal Toxicity Studies and Effectiveness Studies" has been included in Chapter I of these guidelines.

8. Several comments suggested that vaccines and therapeutic agents may be administered during animal safety studies.

The agency concludes that any prophylactic and therapeutic medications, as well as immunizing agents, may be included in the study protocol. It should be established, however, that this concomitant use of drugs and immunizing agents does not interfere with the results of the safety studies.

On the basis of an evaluation of the comments submitted, BVM has revised the guidelines to reflect the comments discussed above. The agency believes that, as revised, these guidelines will aid

in providing uniformity in the establishment of target species safety.

This notice of availability is issued under § 10.90(b), which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency.

A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. The agency is prepared to meet with persons who choose to depart from the guidelines to discuss the matter further to prevent unnecessary expenditure of resources for work that the agency may later determine to be unacceptable.

Single copies of the final guidelines are available from the Dockets Management Branch (address above). Interested persons may submit written comments on the guidelines to the Dockets Management Branch. These comments will be considered in determining whether further amendments to, or revisions of, these guidelines are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket numbers found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 22, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-31963 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

Office of Child Support Enforcement

Conformity of Child Support Enforcement Plan of the State of Ohio With Federal Requirements; Hearing

Notice of hearing is hereby given as set forth in the following letter that has been sent to the Ohio Department of Public Welfare and the Office of the Attorney General of the State of Ohio.

Mr. John Cuddy, Director, Ohio Department of Public Welfare, 30 East Broad Street, 32nd Floor, Columbus, Ohio 43215, and
Mr. Anthony J. Celebrezze, Jr., Attorney General, State Office Tower, 30 East Broad Street, Columbus, Ohio 43215

Gentlemen: This letter is in response to the petition of the State of Ohio, filed by Anthony J. Celebrezze, Jr., Attorney General, State of Ohio, requesting reconsideration of the disapproval of an amendment to Ohio's State plan under title IV-D of the Social Security Act (Ohio Plan Submittal No. 83-15, dated April 6, 1983). The State's request for reconsideration dated October 26, 1983 was received in the Regional Office, Office of Child Support Enforcement on October 27, 1983.

Under the proposed plan amendment, the Ohio IV-D agency would enter into a cooperative agreement with the Office of the Ohio Public Defender and would secure Federal funding for the cost of counsel appointed to represent indigent child support obligors in contempt of court proceedings brought by local IV-D agencies.

Pursuant to 45 CFR 301.14 and 213.12, I am scheduling a hearing to be held on the 13th day of January 1983 in Columbus, Ohio, at 9:30 a.m. in Capital University, 665 South High Street, Columbus, Ohio 43215. Please let me know if the time set for the hearing is agreeable to you.

In accordance with 45 CFR 213.21, I have designated Donald F. Garrett, a Board Member of the Departmental Grant Appeals Board, as the presiding officer for the hearing in this matter. A copy of the designation is enclosed. The hearing will be conducted under the provisions of 45 CFR Part 213.

The issues which will be considered at the hearing are whether the proposed plan amendment, under which the Ohio IV-D agency would receive Federal funding to enter into a cooperative agreement with the Office of the Ohio Public Defender to provide counsel to represent indigent obligors in contempt of court proceedings brought by local IV-D agencies, violates:

1. 45 CFR 304.20 which governs the availability of Federal funding for support enforcement services performed by State and local IV-D agencies under the IV-D State plan. Specifically, § 304.20(b) provides that Federal funding is available for services and activities provided under the IV-D State plan that are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program;

2. 45 CFR 304.21 which makes Federal funding available for the costs of cooperative agreements with courts and law enforcement officials. The term "law enforcement officials" as defined in paragraph (a) of the regulation means district attorneys, attorney general, and similar public attorneys and prosecutors and their staff; or

3. Section C., 1., a. of Attachment A of Office Management and Budget Circular No. A-87 which indicates that to be allowable costs must be necessary and reasonable for proper and efficient administration of the grant program, and, except as otherwise provided in the circular, not be a general expense required to carry out the overall responsibilities of State and local governments.

Any further inquiries, submissions or correspondence regarding this matter should be filed in an original and two copies with Mr. Garrett at the Departmental Grant Appeals Board, Room 2004, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, where the record of this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience please refer to Docket No. 83-258 assigned to these proceedings.

Dated: November 21, 1983.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

[FR Doc. 83-31964 Filed 11-29-83; 8:45 am]

BILLING CODE 4150-11-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; National Center for Devices and Radiological Health

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 47 FR 44614-44620, October 8, 1982) is amended to reflect a total reorganization and realignment of functions in the National Center for Devices and Radiological Health. In the Office of the Center Director, the Office of Health Affairs and the Office of Standards and Regulations are being established. In the Office of Management and Systems, four divisions are being established to consolidate functions and clearly define functional responsibilities within this Office.

The Office of Medical Devices and Office of Radiological Health are being abolished in their entirety. This reorganization provides for a total integration of medical device and radiological health programs into four additional functional areas established as the Office of Compliance, the Office of Device Evaluation, the Office of Science and Technology, and the Office of Training and Assistance. Each of these Offices will encompass a division structure to clarify functions and streamline Center activities.

Section HF-B, Organization and Functions is amended as follows:

1. Delete paragraph (o) and all subparagraphs for the *National Center for Devices and Radiological Health.*

2. Insert new paragraph (o), *National Center for Devices and Radiological Health (HFW)* reading as follows:

(o) *National Center for Devices and Radiological Health (HFW).* Develops and carries out a national program designed to control unnecessary exposures of humans to, and assure the safe and efficacious use of, ionizing and nonionizing radiation-emitting electronic products.

Develops and carries out a national program to assure the safety,

effectiveness, and labeling of medical devices for human use.

Plans, conducts, and supports research and testing to provide the scientific and technological base required for risk assessment, evaluation, compliance, and performance standards development relating to medical devices and radiation-emitting electronic products.

Collects information about injuries and other experience in the use of medical devices and radiation-emitting electronic products and uses this information in Center activities.

Reviews and evaluates medical device premarket approval applications (PMAA's), product development protocols (PDP's), exemption requests for investigational devices (IDE's), and premarket notifications (510(k)'s).

Develops, promulgates, and enforces performance standards for radiation-emitting electronic products and medical devices, and Good Manufacturing Practice (GMP) regulations.

Develops, directs, evaluates, and monitors compliance and surveillance programs for medical devices and radiation-emitting electronic products.

Provides technical and other nonfinancial assistance to small manufacturers of medical devices.

Develops and implements training and educational programs relating to radiological health and medical device issues for other Federal, State, and local agencies, the professional community, consumers, and the public.

(o-1) *Office of the Center Director (HFW1).* Provides leadership and direction for, and evaluation and coordination of, the activities of the Center.

Provides advice and consultation to the Commissioner and other agency officials on policy matters concerning radiological health and medical device activities.

Recommends changes in legislative authority to the Office of the Commissioner.

Establishes policy in the areas of education and communications and formulates strategies for developing and disseminating educational and programmatic information to health professionals, consumers, and other government agencies.

Manages a tracking system for the control and monitoring of the Director's correspondence and provides management support for the coordination of meetings involving the Director and Deputy Director.

(o-1-i) *Office of Management and Systems (HFW11).* Advises the Center Director in regard to all administrative management matters.

Plans, develops, and implements Center management policies and programs concerning manpower management, financial management, personnel management, employee development and training, occupational safety, organization, managment analysis, and general office services support.

Develops and implements strategic and operational planning and programming strategy, and develops and applies effectiveness measures to Center programs.

Designs, implements, operates, and monitors management and scientific/technical computer systems and services in support of Center programs.

Provides general and technical information services to the Center and the public.

Plans, conducts, and coordinates Center committee management activities.

Designs studies and provides overview analyses of Center programs or systems placing emphasis on the reduction of health risks.

(o-1-iA) *Office of the Director (HFW111).* Provides leadership and direction for the Office of Management and Systems.

Advises the Center Director in regard to all administrative management matters and plans, and develops and implements the Center management policies including technical information systems.

Provides administrative management support including budget, planning, personnel, procurement, and other related functions for the Office of Management and Systems, the Office of Health Physics, and the Office of the Center Director.

Conducts special studies and provides overview analysis of Center programs or systems placing emphasis on the reduction of health risk.

(o-1-iB) *Division of Resource Management (HFW11A).* Provides principal advice and guidance to Center management on personnel, financial, and administrative management issues.

Plans, develops, and implements Center management policies and/or programs concerning financial management, personnel management, employee development and training, management analysis, and general administrative services support; develops administrative policy for, and coordinates implementation of, the extramural research program.

Plans, conducts, and coordinates Center committee management activities.

Plans and coordinates the Equal Employment Opportunity Program. Develops polices and procedures for affirmative action plans. Monitors progress toward established objectives and recommends corrective action as appropriate.

Develops and implements Center programs concerning occupational health and safety, physical security, and facilities management.

(o-1-iC) *Division of Information Services (HFW11B).* Provides information services to the Center and the public.

Provides editorial, writing, and publication services for Center technical publications, special documents, and pamphlets.

Manages the Center's information clearance system.

Provides library services, including information retrieval, for Center components and other agencies.

Assists Center components in communicating with selected audiences concerning Center policies, programs, and other activities.

Participates in developing public statements on current issues and activities involving the Center.

(o-1-iD) *Division of Computer Services (HFW11C).* Implements and maintains Center administrative, management, laboratory, statistical, and scientific information systems.

Provides systems programming, data base administration, and operations support services for the Center.

Develops and manages word processing and office automation strategies and systems.

Provides systems analysis and design, computer programming, technical training, and consultative services in data processing, word processing and office automation for the Center.

Serves as Center liaison with other government information system components.

Develops and maintains an ADP Security Plan that provides procedures for assuring the protection of Center data and equipment.

(o-1-iE) *Division of Planning and Evaluation (HFW11D).* Develops and justifies the medical device and radiological health program budgets for both headquarters and the field, and assists the Office of the Commissioner in justifying and presenting the budget to other agency components, the Public Health Service, the Department, the Office of Management and Budget, and Congress.

Develops and implements Center long-range and strategic planning, operational planning and management systems; recommends program priorities and allocation of Center resources,

including the identification of new programs; evaluates and monitors program output with respect to plans and resources.

Develops and conducts evaluations and impact studies for determining the effectiveness of Center programs and policies in attaining the goals of the Radiation Control for Health and Safety Act and the Medical Device Amendments to the Food Drug and Cosmetic Act and for improving program effectiveness and resource utilization.

Develops and conducts operations research using modeling, linear programming, statistical techniques, etc., for determining cost effectiveness and program priorities, forecasting workloads to determine resource allocations, selecting alternative operating plans, and evaluating program results.

Provides program planning and evaluation consultation services to Center personnel.

Participates in planning for the Center research program and provides for post-award review and monitoring of research grants and contracts.

(o–1–ii) *Office of Health Physics (HFW12).* Provides leadership and technical expertise to other Departmental components in applying health physics procedures and radiation protection principles to radiological emergencies and other public radiation incidents.

Conducts studies to assess or advance the practical application of radiation protection principles, and maintains liaison with national and international radiation protection organizatons.

Provides a secretariat for the coordination of radiation protection activities among Departmental components.

Provides technical services and health physics advice to the Center and other Departmental components.

Performs radiation dosimetry studies that contribute to the advancement of radiation protection sciences.

(o–1–iii) *Office of Health Affairs (HFW13).* Advises the Center Director on medical and dental issues that affect Center policies, direction, and program goals.

Provides medical and dental consultation, advice, and guidance on policies, activities, and programs.

Provides senior medical review, support and assistance to Center regulatory activities and programs.

Develops, coordinates, and provides professional medical guidance on Center policies, position statements, and program activities that involve or significantly impact on radiological and medical device safety.

Provides medical and dental consultation and expertise to the Center and interagency groups and committees addressing radiological and medical device health concerns; acts as the Executive Secretariat for the Medical Radiation Advisory Committee.

Advises and assists in identification and selection of individuals to serve on the Center's Advisory and Classification Committees.

Plans, conducts, coordinates, and serves as Center medical representative on liaison activities with health professionals and their organizations to secure their input and assistance in the formulation and implementation of Center programs.

Participates in the planning and coordination of educational and informational programs for health professional organizations.

Approves user survey methodology, design, and questionnaires within the agency prior to Office of Management and Budget forms clearance submission; reviews Memoranda of Need which require the collection of health research data and advises agency components on the planning and design of health research studies.

(o–1–iv) *Office of Standards and Regulations (HFW14).* Advises the Center Director and other agency officials and is the Center focal point for liaison with the Office of the General Counsel and appropriate agency components on FDA regulation development responsibilities relating to medical device and radiological health activities.

Coordinates the development, review, and modification of all regulations and legislative proposals under Center authority and the review of criteria, performance standards, guides, and documents related to the Center's mission and/or proposed by foreign, national, or State agencies or voluntary standards-setting groups. Coordinates the development, review, and submission of **Federal Register** publications for the Center. Prepares position statements for the Center on the standards promulgated by other organizations.

Coordinates liaison with other standards-setting organizations and prepares reports and maintains files on all committees representing national and international standards-setting organizations; maintains liaison with trade associations and other special interest groups.

Coordinates the Center's preparation of problem definition studies, economic problem analyses for regulations, published policies, and other significant Center actions, and prepares economic assessment and impact statements as required under current Executive Orders and legislation.

Coordinates the review and analysis of comments received on proposed regulations and petitions submitted for Center action.

Coordinates requests and Center activities pertaining to the Freedom of Information and Privacy Acts.

Provides the Executive Secretariat for the Technical Electronic Product Radiation Safety Standards Committee.

(o–2) *Office of Compliance (HFWC).* Advises the Center Director and other agency officials on legal, administrative, and regulatory programs and policies concerning agency compliance responsibilities relating to medical device and radiological health activities.

Develops, directs, coordinates, evaluates, and monitors compliance and surveillance programs covering regulated industry.

Conducts field tests and inspections when necessary for regulatory purposes and evaluates industry quality control and testing programs to assure compliance with regulations.

Provides advice to agency field offices on, and manages Center activities relating to legal actions, case development, and contested case assistance.

Designs, develops, and implements Center programs to: collect, evaluate, and disseminate medical device data, including information on injuries and other experience; register device establishments; and list products.

Manages and coordinates Center activities under the Government-wide Quality Assurance and Bioresearch Monitoring Programs.

Coordinates all field planning activities and issues all field assignments for the Center.

Provides technical support and guidance in the development and review of standards and regulations, and the training of Federal and State compliance personnel.

Advises actual or potential manufacturers concerning the requirements of the law and regulations.

(o–2–i) *Office of the Director (HFWC1).* Provides scientific and management leadership, direction, and coordination and establishes policy for Office programs and activities.

Develops and maintains compliance data management systems for the Center.

Provides administrative management support including budget, planning,

personnel, procurement, and other related functions for the Office.

(o-2-ii) *Division of Radiological Products (HFWCA).* Performs inspections and investigations of manufacturers and their products.

Reviews and evaluates design, test, and production data and reports from manufacturers to insure compliance with promulgated standards and regulations; provides guidance, interpretations, and review of policy, regulations, and standards for users and manufacturers of electronic products; develops and coordinates programs designed to facilitate compliance by manufacturers.

Evaluates Establishment Inspection Reports (EIR's) (including GMP inspections for radiation-emitting devices) and test reports received from the field, and provides guidance and followup as appropriate.

Develops and issues product reporting, compliance, and testing guides for industry.

Tests and evaluates products for compliance in manufacturing plants and supports this function in headquarters tests.

Evaluates requests for variances from performance standards and requests for exemption from reporting requirements.

(o-2-iii) *Division of Compliance Programs (HFWCB).* Identifies compliance program needs, develops and issues surveillance and compliance programs relating to the device and electronic products industries, and coordinates the establishment of priorities for compliance activities pertinent to these programs.

Plans and develops appraisal systems for each compliance program and evaluates the effectiveness of overall compliance programs. Revises existing programs as necessary to maintain their effectiveness.

Develops, reviews, coordinates, and/or conducts studies to measure compliance by the medical device and electronic products industries with laws and regulations.

Develops, implements, and monitors the medical device and radiological health field work plan in coordination with the appropriate Center and agency components.

Develops, coordinates, reviews, and revises medical device industry GMP regulations. Develops and implements programs to assure uniform interpretation and application of GMP's and recommends regulatory action when appropriate

Develops, coordinates, and/or conducts medical device and electronic products training programs for field personnel and State and local agencies in coordination with other Center and agency components.

Selects and arranges for the collection of products to be tested by the field and headquarters laboratories. Evaluates laboratory test reports and conducts followup activities.

Monitors the operation of, and establishes policy for the medical device GMP advisory committee and takes action on committe recommendations.

Coordinates Center responsibilities for, and implements the Government-wide Quality Assurance Program with the appropriate agency components and the field.

(o-2-iv) *Division of Compliance Operations (HFWCC).* Monitors, implements, evaluates, and approves or disapproves corrective action programs for noncompliant or defective products and recalls and/or requests for exemption from notification and repair requirements. Coordinates activities related to device hazard notification.

Manages and coordinates activities associated with regulatory actions (i.e., information and regulatory letters; civil penalties; seizures; repair, replace, and refund requirements; banning actions; and domestic or import detentions) including guidance to agency field offices.

Establishes and maintains a precedent correspondence and regulatory policy file and assures agencywide dissemination of policy decisions through existing mechanisms (i.e., administrative guidelines, compliance policy guides, etc.) as appropriate.

Monitors professional journal advertising and promotional material and related labeling of commercially distributed medical devices to evaluate claims relating to compliance with the device law and regulations. Secures labeling and advertising information by issuing field assignments.

Develops, interprets, and issues policy guidance in response to specific requests from the medical device and electronic product industries, trade associations, and other Federal agencies.

Monitors and evaluates commercially distributed medical device promotional material, advertisements, and labeling.

Coordinates and serves as executive secretary for the Health Hazards Evaluation Committee.

Issues responses to requests to export devices requiring export authorizations.

Plans, initiates, coordinates, and conducts medical device investigations of incidents or problems. Evaluates EIR's and test reports received from the field and provides guidance and followup as appropriate.

(o-2-v) *Division of Product Surveillance (HFWCD).* Develops and operates a medical device registration and product listing system including liaison with other agency components and the regulated industry regarding the use and submission of this data.

Plans, develops, and operates an incident monitoring network utilizing agency field offices, industry, and other information sources. Provides data to the agency and non-FDA components and develops contracts and inter-agency agreements.

Plans, initiates, coordinates, and conducts medical device investigations of incidents or other adverse experiences or problems. Evaluates EIR's and test reports received from the field, and provides guidance and followup as appropriate.

Monitors professional journal advertising and promotional material and related labeling of investigational medical devices to evaluate claims as they relate to compliance with the device law and regulations. Processes requests for labeling and advertisement information.

Coordinates Center bioresearch monitoring activities with respect to field programs and assignments.

(o-3) *Office Of Device Evaluation (HFWD).* Advises the Center Director and other agency officials on all premarket notification submissions (510(k)'s), premarket approval applications (PMAA's), product development protocols (PDP's), device classifications, and investigational device exemptions (IDE's).

Plans, conducts and coordinates appropriate Center actions regarding approval, denial, and withdrawal of approval of PMAA's PDP's IDE's, and makes substantially equivalent determinations for 510(k)'s and monitors sponsors' conformance with requirements of all programs.

Conducts a continuing review, surveillance, and medical evaluation of the labeling, clinical experience, and required reports submitted by sponsors of approval applications.

Provides executive secretariat and other technical support to medical device advisory panels; recommends establishing or restructuring such panels as appropriate.

Develops and interprets regulations and guidelines regarding classification, PDP's IDE's, PMAA's, and 510(k)'s.

Coordinates Center classification activities; reviews petitions for or initiates reclassification of medical devices.

Participates in the development of national and international consensus

standards, and voluntary guidelines through interaction with appropriate national and international standards committees.

Operates a document control system.

(o-3-1) *Office of the Director (HFWD1).* Provides scientific and management leadership, direction, and coordination and establishes policy for all device evaluation programs and activities.

Directs planning, programming, and budgeting and provides administrative and document control support programs.

Provides advice and consultation to the Center Director, the Commissioner, and other agency officials on policy matters concerning device evaluation activities, including the need for changed or additional legislative authority.

Maintains liaison with other agency components; other Federal, State, and international agencies; industry and consumer and professional organizations on issues related to the activities of the Office.

Provides overall coordination and takes action (approval, disapproval, withdrawal of approval) on PMAA's, PDP's and IDE's; directs and coordinates advisory panel and classification activities; reviews petitions for or initiates reclassification of medical devices; coordinates amd makes determinations on 510(k)'s for nonsubstantially equivalent devices.

(o-3-ii) *Division of Cardiovascular Devices (HFWDA).* Serves as the primary source for scientific and medical expertise on cardiovascular devices with regard to safety and effectiveness.

Performs, coordinates, directs and/or monitors all actions including scientific and medical review and evaluation for documents related to classification, petitions, premarket notification submissions (510(k)'s), premarket approval applications (PMAA's), product development protocols (PDP's), and investigational device exemptions (IDE's), and supplements or amendments to these submissions.

Makes equivalent and nonequivalent determinations, approves or disapproves actions related to classification, petitions, 510(k)'s, PMAA's, PDP's, and IDE's, and all supplements and amendments to these submissions, as authorized.

Provides executive secretarial support and other technical and nontechnical support to classification advisory panels and panel members and consultants, and takes action on panel recommendations.

Provides liaison, coordinates and/or takes action as appropriate on classification actions, petitions, 510(k)'s, PMAA's, PDP's, and IDE's with Center and agency components; Federal, State and international agencies; and industry, consumer, and professional organizations.

(o-3-iii) *Division of Gastroenterology/Urology and General Use Devices (HFWDB).* Performs the functions as described in paragraph (o-3-ii) above with regard to gastroenterology/urology and general use devices.

(co-3-iv) *Division of Anesthesiology, Neurology, and Radiology Devices (HFWDC).* Performs the functions as described in paragraph (o-3-ii) above with regard to anesthesiology, neurology, and radiology devices.

(o-3-v) *Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices (HFWDD).* Performs the functions as described in paragraph (o-3-ii) above with regard to obstetrics/gynecology, ear, nose, throat, and dental devices.

(o-3-vi) *Division of Surgical and Rehabilitation Devices (HFWDE).* Performs the functions as described in paragraph (o-3-ii) above with regard to surgical and rehabilitation devices.

(o-3-vii) *Division of Clinical Laboratory Devices (HFWDG).* Performs the functions as described in paragraph (o-3-ii) above with regard to clinical laboratory devices.

(o-3-viii) *Division of Ophthalmic Devices (HFWDH).* Performs the functions as described in paragraph (o-3-ii) above with regard to ophthalmic devices.

(o-4) *Office of Science and Technology (HFWE).* Provides scientific support, including laboratory and statistical support, in response to the program needs of other Center and agency components.

Plans, develops, and implements Center research and testing programs and protocols in the areas of physical science, life science, and engineering; develops, modifies, and calibrates scientific instruments and equipment for use in testing programs.

Plans, conducts, or stimulates research on the human health effects of radiation and medical devices.

Participates in the development of national and international consensus standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Provides scientific and engineering support for the review of medical device and radiological product submissions.

Provides statistical, epidemiological, and biometric services in support of the operating and administrative programs of the Center.

Conducts research related to existing and emerging health technologies.

(o-4-i) *Office of the Director (HFWE1).* Provides leadership, management, direction, and coordination and establishes policy for Office programs and activities.

Provides coordination within the Office for the evaluation and scientific review of medical device applications.

Develops, evaluates, and promotes automated technology in clinical facilities to improve the delivery of services and to assist in the containment of health care costs.

Plans and manages Center scientific and engineering research, development, and product testing programs including management and coordination of field laboratory programs.

Provides leadership, direction, and support in the administration and management of all Office resources.

Provides medical and epidemiologic advice and guidance on Office programs.

Establishes and maintains liaison with professional organizations, industry associations and groups, and domestic, foreign, and international government organizations on scientific and engineering matters relevant to Office activities.

(o-4-ii) *Division of Medical Engineering (HFWEA).* Provides support at panel meetings where the Summary of Safety and Effectiveness data is presented and provides any needed laboratory domonstration of product operation prior to panel review.

Coordinates Center-sponsored inter-laboratory comparisons of proposed test methods for medical device performance standards.

Provides support in the development and conduct of compliance activities.

Develops engineering bases, test methods, equipment, and procedures for regulatory and voluntary performance standards and guidelines, including studies to determine accuracy, precision limits, and reliability of available testing procedures and equipment.

Participates in the development of consensus national and international standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Conducts or supports research studies which help determine product performance limits, safety threshold, and/or material characteristics for Center programs.

Develops measurement and calibration methodologies required for Center programs.

Participates in the investigation of medical device failures and retrofits and makes recommendations on Center action.

(o-4-iii) *Division of Life Sciences (HFWEB).* Develops and provides the Center with experimental, epidemiological, and statistical information required for risk assessment, device evaluation, compliance, and performance standards development, and other programs.

Plans, conducts, supports, and evaluates research on the health effects of radiation and medical devices.

Develops, reviews, maintains, and disseminates up-to-date scientific information relevant to radiation-induced and medical device-related health effects.

Participates in the development of consensus national and international standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Provides support in the development and conduct of compliance activities.

(o-4-iv) *Division of Physical Sciences (HFWEC).* Develops engineering bases, test methods, equipment, and procedures for regulatory and voluntary performance standards and guidelines, including studies to determine accuracy, precision limits, and reliability of available testing procedures and equipment.

Participate in the development of consensus national and international standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Provides support in the development and conduct of compliance activities as needed.

Conducts or supports research studies which help determine product performance limits, safety threshold, and/or material characteristics for Center programs.

Develops measurement and calibration methodologies required for Center programs.

Provides engineering, machine shop, and fabrication services for instrumentation, exposure sources, calibration facilities, test equipment, and other Center needs.

(o-5) *Office of Training and Assistance (HFWG).* Conducts and evaluates a nationwide program to identify and reduce unnecessary population exposure resulting from the use of radiation in the healing arts and to improve the effectiveness of necessary healing arts exposure.

Conducts and evaluates programs to assess and to assure the safe and effective use of medical devices and radiation-emitting consumer and industrial products.

Directs a program to provide tehnical and other nonfinancial assistance to small manufacturers of medical devices to promote their understanding of and compliance with the medical device amendments and regulations.

Conducts and coordinates informational and training activities for consumers and health professionals both on an individual and organizational basis.

Establishes and maintains liaison with consumer and professional organizations, industry associations and groups, and domestic, foreign, and international government organizations to promote Center program goals.

Collects, maintains, and analyzes demographic and technical data bases needed to characterize the extent and circumstances of use of selected types of radiation-emitting and other medical devices.

Provides training services to the agency, other Federal, State, and foreign government agencies, and nongovernment agencies with health-related missions.

Conducts and coordinates media and graphic arts services to support Center activities.

Participates in the development of national and international consensus standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Conducts appropriate technical and use related reviews of medical device and radiological product submissions.

(o-5-1) *Office of the Director (HFWG1).* Provides leadership, management, and direction for, and evaluation and coordination of, Office programs.

Implements the Presidential Directive, "Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays," and coordinates the implementation of the Center's responsibilities under Pub. L. 97-35 (Consumer—Patient Radiation Health and Safety Act of 1981).

Coordinates the Office review of medical device actions and directs the Office review of medical device labeling activities.

Provides planning, analysis, management support, and policy formulation to define and maintain Office programs and responsibilities.

Provides all necessary administrative support to the Office.

Provides periodic reports to the Center Director regarding the status of ongoing and anticipated Office programs.

(o-5-ii) *Division of Consumer Affairs (HFWGA).* Conducts, coordinates, and evaluates Center information and training programs intended for patients, consumers, advisory panel consumer representatives, agency consumer affairs officers, and foreign, State, and local consumer protection officials.

Maintains liaison with consumer organizations and advises the Office Director about information and training programs that can best address their needs and concerns in order to improve the safe and effective use of medical device and radiation-emitting products. Assists the agency in its efforts to encourage consumer input into Center policy and rulemaking processes.

Participates with other Center components in the development of programs and official public issuances relating to patient and consumer roles regarding the safe and effective use of medical devices and radiation-emitting products.

Plans for and manages field resources allocated for Center consumer education activities. Prepares training programs for agency consumer affairs officers regarding medical device and radiation-emitting products. Coordinates Center issues for consumer exchange meetings or public hearings.

Acts as the Center focal point for consumer inquiries and liaison with other agency components on consumer affairs.

(o-5-iii) *Division of Small Manufacturers Assistance (HFWGB).* Directs a program to provide technical and other nonfinancial assistance to small manufacturers of medical devices and radiation-emitting electronic products to promote understanding of and compliance with applicable laws and regulations.

Serves as a central coordinating point to assist small manufacturers of medical devices and radiological health products in contracting appropriate agency and Center components, as well as other Federal and State agencies.

Identifies program information needs of small manufacturers of medical devices and radiological health products, and develops and conducts communication and education programs for small manufacturers of medical device and radiological health products in conjuction with other agency components.

Advises the Office Director and other Center components on the effects that proposed and existing regulations may have on small manufacturers. Suggests

changes to ameliorate undue adverse effects.

Presents and explains relevant Center activities, plans, policies, and decisions to small manufacturers and their trade and professional associations.

(o–5–iv) *Division of Intergovernmental Programs (HFWGC).* Maintains a comprehensive data base to describe all relevant aspects of the conduct of Federal and State radiation protection and medical device programs in the United States.

Conducts studies to assess trends in population exposure to emissions from diagnostic radiation sources and to identify causes of unnecessary exposure.

Provides training and technical support to State and Federal radiation control agencies in the implementation of radiation quality assurance programs and assists them in evaluating the effectiveness of these programs in reducing unnecessary exposure. Acts as liaison for, and coordinates Center activities relating to, the Conference of Radiation Control Program Directors, Inc.

Provides training and technical support to State agencies in the implementation of medical device control programs and assists them in evaluating the effectiveness of these programs in reducing unnecessary risks in the use of medical devices.

Provides program planning and support activities for Office cooperative programs with other radiation control and medical device agencies and maintains close liaison with Federal and State personnel in the implementation of nationwide control programs developed by the Office and Center.

Coordinates a program to develop and implement standardized evaluation protocols for all Federal medical facilities to insure that healing arts radiological procedures are consistent with safety precautions and standards.

(o–5–v) *Division of Technical Development (HFWGD).* Develops techniques and procedures to identify, assess, and correct safety and effectiveness problems related to the use of medical devices.

Develops techniques and procedures to identify, assess, and correct exposure and image quality problems in medical radiological procedures.

Develops and initiates programs to encourage implementation of quality assurance programs in medical facilities and to support the activities of these programs.

Conducts studies to evaluate the effectiveness of quality assurance programs and makes recommendations for maintaining diagnostic quality and optimum patient exposure consistent with high quality medical care at reasonable costs.

Conducts applied research projects designed to evaluate medical devices under clinical conditions aimed at identifying potential user programs.

(o–5–vi) *Division of Professional Practices (HFWGE).* Studies and evaluates conditions of exposure to diagnostic and therapeutic medical radiation regarding the safety and effectiveness of use. Identifies medical radiation practices and procedures which cause unnecessary patient exposure.

Studies and evaluates the use of medical devices regarding the safety and effectiveness of use of such devices. Identifies medical device use practices and procedures which detrimentally affect patient health and safety.

Conducts studies for the purpose of identifying trends in the use of radiation-emitting and other medical devices. Performs data analysis to assess both the impact of medical device use on the population and the effectiveness of Center programs on device use.

Plans, develops, and promotes educational programs for professional and allied health users of radiation-emitting and other medical devices to promote the safe and effective use of such devices.

(o–5–vii) *Division of Training Support (HFWGG).* Provides coordination services for the development of Center education and training programs for Federal/State personnel, healing arts professionals, consumers, and manufacturers of medical devices.

Administers an information network to provide training materials to Federal, State, and local government organizations relating to Center programs.

Provides graphic arts, photographic, videotape, audiotape advice and service to the Center.

Provides video production services to other components within FDA.

Administers the distribution of video slide/sound programs to healing arts professionals, consumers, and manufacturers of medical devices.

Administers the Learning Carrels training program for Center employees.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs all delegations of authority to the Directors, Deputy Directors, and associate directors of the abolished Offices of Medical Devices and Radiological Health are vested in the Directors, Deputy Directors, and associate directors of the new Offices of Compliance, Device Evaluation, Science and Technology, and Training and Assistance as the delegations relate to their newly assigned functions and all delegations of authority to any other officer or employee of the Center in effect prior to the date of this order shall continue in effect in them or their successors.

Dated: November 21, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-31985 Filed 11-29-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Commission on Fair Market Value Policy for Federal Coal Leasing; Availability, Inquiry and Meeting

AGENCY: Commission on Fair Market Value Policy for Federal Coal Leasing, Office of the Chairman, Interior.

ACTION: Notice of availability and request for comments on tentative recommendations.

SUMMARY: Notice is hereby given that the Commission on Fair Market Value Policy for Federal Coal Leasing is making available tentative recommendations for public review and comment. Copies of the tentative recommendations may be requested from the Commission office. Comments are due December 18, 1983, and will be discussed at a Business Meeting which will be held in the Brick Room at 1925 K St., NW., Washington, D.C. on December 21 and 22, 1983, beginning at 9:00 a.m. each day.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Solomon, Report Director, or Wiley Horsley, Special Assistant to the Chairman, Commission on Fair Market Value Policy for Federal Coal Leasing, Suite 400, 1015 20th Street, NW., Washington, D.C. 20036, Phone: (202) 632–6501.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to the authority and requirements of Pub. L. 98–63, approved July 30, 1983, making supplemental appropriations for fiscal year 1983, and for other purposes, and in accordance with the Federal Advisory Committee Act (Pub. L. 92–463).

The Commission has formulated tentative recommendations on the basis of testimony and information presented by witnesses representing key government, industry, environmental and other interested groups at public hearings. It has developed these

tentative recommendations through discussions at public business meetings.

This notice is being published in order to alert the public as to the availability of the recommendations and to give the public and interested parties an opportunity to provide written comments. Requests for copies of the tentative recommendations and resulting comments should be addressed to Commission on Fair Market Value Policy for Federal Coal Leasing, 1015 20th Street, NW., Washington, D.C., Attn: Dr. Susan Solomon, Report Director, and should be received by December 18, 1983. Public comments will be discussed at a Business Meeting on December 21 and 22, 1983 which will be held in the Brick Room at 1925 K St., NW., Washington, D.C., commencing at 9:00 a.m. each day. Telephone requests should be made to (202) 632-6501.

The Commission was established by Pub. L. 98-63 approved by President Reagan on July 30, 1983, to review Federal coal leasing statutes, policies and procedures to ensure receipt of fair market value. To complete its mandate, the Commission will:

A. Examine the current statutes, policies and procedures to ensure receipt of fair market value of Federal coal leases;

B. Evaluate efforts to improve the Department's program; and

C. Recommend improvements in those statutes, policies, and procedures.

Dated: November 28, 1983.

David F. Linowes,

Chairman.

[FR Doc. 83-32150 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Billings Resource Management Plan Final Environmental Impact Statement; Availability

November 1, 1983.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a Final Environmental Impact Statement (FEIS) on the Billings Resource Management Plan.

DATE: Protests must be received by December 30, 1983.

ADDRESS: Protests should be sent to Director (202), Bureau of Land Management, 1600 "C" Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jerome W. Jack, Bureau of Land Management, 810 E. Main, Billings, Montana 59105, Telephone: (406) 657-6262.

SUPPLEMENTARY INFORMATION: The FEIS for the Billings Resource Area analyzes the proposed resource management plan for managing approximately 425,336 surface acres of public land and 906,084 acres of mineral ownership in Carbon, Big Horn, Golden Valley, Musselshell, Stillwater, Sweet Grass, Wheatland and Yellowstone Counties, Montana. The Resource Area also manages 6,340 acres in Big Horn County, Wyoming within the Pryor Mountain Wild Horse Range.

Grazing management, wild horse management, wildlife management, timber management, coal, oil and gas leasing, land tenure adjustment, classifications under the Classification of Multiple Use Act of 1964, recreational access, off-road vehicle use, environmental education, wild horse interpretation and the wilderness study of selected lands are discussed in the FEIS. Also discussed is corridor planning, unauthorized agricultural use, areas of critical environmental concern, public affairs, fuel wood permits, visual resources, cultural and paleontological resources and fire suppression. With the exception of the recommendation for the Twin Coulee and Pryor Mountain Wilderness Study Areas, all parts of this proposed resource management plan may be protested. Protests should be sent to the Director (202), Bureau of Land Management, 1800 "C" Street, NW., Washington, D.C. 20240, prior to December 30, 1983, the end of the 30-day protest period, and should include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts being protested.

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.

A short, concise statement explaining why the BLM Miles City District Manager's decision is wrong.

At the end of the 30-day protest period, the proposed resource management plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final resource management plan shall be published with the record of decision in mid 1984.

Copies of the FEIS will be available for review at the following locations:

Bureau of Land Management

Montana State Office, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107
Miles City District Office, P.O. Box 940, Miles City, Montana 59301
Billings Resource Area Office, 810 E. Main, Billings, Montana 59105

Libraries

Parmly Billings Library, 510 N. Broadway, Billings, Montana 59101
Miles City Public Library, 1 South 10th, Miles City, Montana 59301
Lewiston City Library, 701 W. Main, Lewiston, Montana 59457
Laurel Library, 115 W. 1st Street, Laurel, Montana 59044
Red Lodge Carnegie Library, 8th Street & Broadway, Red Lodge, Montana 59068
Big Horn Public Library, 419 N. Custer, Hardin, Montana 59034
Roundup Community Library, 6th Street & 6th Avenue, Roundup, Montana 59072
Carnegie Public Library, Box 846, Big Timber, Montana 59011
Harlowton Public Library, 510 N. Broadway, Harlowton, Montana 59036
Big Horn County Library, Box 231, Basin, Wyoming 82410
Washakie County Library, 1019 Coburn, Worland, Wyoming 82410

Demiles R. Pedersen,

Acting State Director.

[FR Doc. 83-30270 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-84-M

Headwaters Resource Management Plan; Butte District, Montana

November 1, 1983.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed resource management plan/final environmental impact statement.

SUMMARY: Pursuant to Section 202(f) of the Federal Land Policy and Management Act of 1976 and Section 102(2)(c) of the National Environmental Policy Act of 1969, a proposed resource management plan/final environmental impact statement (RMP/EIS) has been prepared for the Headwaters Resource Area. The RMP/EIS addresses future management options for approximately 311,337 surface acres and 655,505 acres of federal mineral estate administered by the Bureau of Land Management in

west-central Montana. The affected counties are Broadwater, Cascade, Gallatin, Jefferson, Lewis and Clark, Meagher, Park, Pondera, and Teton.

Public participation: The draft RMP/EIS was available for public review from May 6, 1983 to August 5, 1983. Letters and/or oral statements received from 89 agencies, organizations and individuals were considered during preparation of the proposed RMP/final EIS.

Copies of the proposed RMP/final EIS are available at the Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, MT 59702, telephone (406) 494–5059, and at the Great Falls Resource Area Office, 215 First Avenue North, P.O. Drawer 2865, Great Falls, MT 59403, telephone (406) 727–0503. Public reading copies are available for review at the following locations:

Office of Public Affairs, Location Building, 18th and C Streets NW., Washington, D.C. 20240

BLM, Montana State Office, Public Affairs Office, 222 North 32nd Street, Billings, MT 59107

BLM, Butte District Office, 106 North Parkmont, Butte, MT 59702

With the exception of wilderness recommendations for the Black Sage and Yellowstone River Island Wilderness Study Areas, all parts of this proposed plan may be protested. Protests should be sent to the Director (202), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240, prior to December 31, 1983 (the end of the 30-day protest period), and should include the following information:

(1) The name, mailing address, telephone number and interest of the person filing the protest;

(2) A statement of the issue or issues being protested;

(3) A statement of the part or parts of the plan being protested;

(4) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and

(5) A concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day period, the proposed plan, excluding any portion under protest, will be done. Approval will be withheld on any portion of the plan under protest until final action has been completed.

Any significant change to the proposed plan made as a result of a protest will be made available for public review and comment prior to final approval and implementation.

SUPPLEMENTARY INFORMATION: The proposed RMP was developed following analysis of four alternatives, with one representing a continuation of present management direction (no action). The others emphasize environmental protection, resource production, and an intermediate or balanced approach (the proposed RMP).

The plan focuses on resolving 11 resource management issues: oil and gas leasing and development; grazing allotment and riparian habitat management; wilderness study recommendations; forest management; land ownership adjustments; mineral exploration and development; motorcycle use areas; motorized vehicle access; utility and transportation corridors; coal leasing; and special designations.

Although the plan continues to refer only to "the Headwaters Resource Area," it now also involves the newly established Great Falls Resource Area. In April 1983, administrative responsibility for public land in Pondera, Teton, Cascade, Meagher and the northern half of Lewis and Clark Counties was transferred from the Headwaters Resource Area Office of the Butte District to the Great Falls Resource Area Office of the Lewistown District. This transfer of responsibilities was a direct result of the merger of the BLM and the Minerals Management Service. The net result of these changes is that two offices, rather than one, will be responsible for implementation and minitoring of the Headwaters RMP.

FOR FURTHER INFORMATION CONTACT: Project Manager, Headwaters RMP, Butte District Office, 160 North Parkmont, P.O. Box 3388, Butte, MT 59702. Telephone (406) 494–5059.

Demiles R. Pedersen,

Acting State Director.

[FR Doc. 83-30299 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-84-M

District Advisory Council Meeting; Correction

Notice is hereby given in accordance with Pub. L. 94–579 (FLPMA) that a meeting of the Susanville District Advisory Council will be held on December 15 and 16, 1983 as published in the **Federal Register** on November 17, 1983 on page 52360. The meeting will begin a 1 p.m. on December 15, rather than at 10 a.m. as stated in the earlier document.

C. Rex Cleary

District Manager.

[FR Doc. 83-32002 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-84-M

Proposed All American Pipeline Project; Amended Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management is amending its Notice of Intent to prepare an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the proposed All American Pipeline.

The EIR/EIS will now consider the impacts of constructing the proposed Getty Oil Pipeline as well as the All American. The Getty pipeline would run along nearly the same right of way as All American from Santa Barbara, California, to its terminus south of Bakersfield, California. The Getty pipeline would be a 20 to 30 inch line. The pipeline would carry up to 400,000 barrels of crude oil per day. The issues to be considered in the EIR/EIS would be the same as those identified for the All American Pipeline.

DATES: The Santa Barbara and Santa Maria scoping meetings have been rescheduled for Monday, December 19, at the following locations and times:

Location and Time

City Council Chambers, Santa Barbara City Hall, Delaguerra Plaza, Santa Barbara, CA, 1:30–4 p.m.

City Hall, 110 East Cook, Santa Maria, CA, 7–9:30 p.m.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507.

Dated: November 23, 1983.

Gerald E. Hillier,

District Manager.

[FR Doc. 83-32003 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Filing of Plat of Survey

November 18, 1983.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on the date noted.

Indian Meridian

T. 10 N., R. 3 E., filed October 5, 1983.

A dependent resurvey of a portion of the subdivisional lines and partial subdivision of sections 13, 14, and 24, Township 10 North, Range 3 East, Indian Meridian, Oklahoma, under Group 38, OK was accepted September 27, 1983.

New Mexico Principal Meridian

T. 25 N., R. 15 W., filed October 5, 1983.

A dependent resurvey of the Sixth Standard Parallel North, through Range 15 West, and the survey of the north and west boundaries and the subdivisional lines of Township 25 North, Range 15 West of the New Mexico Principal Meridian, New Mexico, under Group 812 NM, was accepted September 30, 1983.

T. 14 N., R. 4 E., filed October 20, 1983.

A dependent resurvey of a portion of the west boundary of the San Felipe Pueblo Grant, through Townships 13 and 14 North, and a portion of the north and south boundaries of the Santa Rosa de Cubero Grant, the north and south boundaries, the subdivisional lines, and the subdivision of certain sections west of the San Felipe Pueblo Grant, Township 14 North, Range 4 East, of the New Mexico Principal Meridian, New Mexico, under Group 791 NM, was accepted October 7, 1983.

T. 15 N., R. 4 E., filed October 20, 1983.

A dependent resurvey of a portion of the west boundary of the San Felipe Pueblo Grant, the south boundary of the Santo Domingo Pueblo Grant, the subdivisional lines and the subdivision of certain sections west of the San Felipe Pueblo Grant, Township 15 North, Range 4 East, of the New Principal Meridian, New Mexico, under Group 791 NM, was accepted October 7, 1983.

T. 23 N., R. 10 E., filed November 10, 1983.

A dependent resurvey of a portion of the south, east, west and north boundaries, a portion of the subdivisional lines, a portion of certain boundaries of Small Holding Claims, a portion of certain boundaries of lots in the Dixon Plaza and the subdivision of sections 1, 11, 12, 16, 19, 20, 28–29, 34 and 35 and the reestablishment of portions of the meander lines of the Rio Grande and the survey of lot 12 in section 28, and lot 35 in section 27, Township 23 North, Range 10 East of the New Mexico Principal Meridian, New Mexico, under Group 769 NM, was accepted October 28, 1983.

The survey of T. 10 N., R. 3 E., OK, Townships 14 and 15 North, Range 4 East, and Township 25 North, Range 15 West, were requested by the Bureau of Indian Affairs and Township 23 North, Range 10 East, was requested by the District Manager, Albuquerque, New Mexico.

The plats will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Leroy C. Montoya,

Deputy State Director, Operations.

[FR Doc. 83-32004 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-84-M

[4-19952-I-LM-CA]

Notice of Conveyance of Public Land—CA 13602; Riverside County, California

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), Walter D. and Maryel Green, Box 306, Desert Center, California 92239, have purchased by competitive sale public land in Riverside County, California, described as:

San Bernardino Meridian, California

T. 5 S., R. 15 E.,
Sec. 10, S½NW¼SE¼SE¼.
Containing 5.00 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Mr. and Mrs. Green.

Dated: November 21, 1983.

Eleanor Wilkinson,

Chief, Lands & Locatable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 83-33014 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-84-M

[4-21702-ILM]

Utah; Decisions on State Director's October 14, 1983, Wilderness Inventory Become Final on Units Not Appealed

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The State Director's final decision on wilderness inventory units set aside and remanded by the Interior Board of Land Appeals (IBLA) on April 18, 1983, for reassessment and as published in the October 14, 1983, **Federal Register** is now final on the following units:

Unit No., Unit Name, and S.D. Final Decision

UT-040-078, Death Ridge, identify 62,870 acres as WSA
UT-040-079, Burning Hills, identify 61,550 acres as WSA
UT-040-248, Wahweap, identify 134,400 acres as WSA
UT-040-275 [1], The Cockscomb, identify 10,080 acres as WSA
UT-060-068A, Desolation Canyon, add 41,600 acres to existing WSA and also create a new WSA of 7,500 acres.[2]
UT-060-068B, Floy Canyon, identify 72,605 acres as WSA
UT-060-100B, Flume Canyon, add 3,250 acres to existing WSA
UT-060-100C, Coal Canyon, add 17,615 acres to existing WSA
UT-060-181, Mancos Mesa, identify 51,440 acres as WSA
UT-080-730, Winter Ridge, identify 42,462 acres as WSA

The above decisions became final as of 4:30 p.m., November 14, 1983 (end of day appeal period) as no appeals on the decisions were filed.

The following unit decisions are not final since an appeal to the IBLA has been filed:

Unit No., and Unit Name

UT-020-037, Newfoundland Mountains
UT-020-129/050-130A, Dugway Mountains
UT-040-075, Horse Spring Canyon
UT-040-076, Carcass Canyon
UT-040-077, Mud Spring Canyon
UT-040-204B, Central Wah Wah Mountains
UT-050-238, Mt. Ellen/Blue Hills
UT-050-241, Fiddler Butte
UT-050-248, Mt. Pennell

That portion of the inventory unit(s) listed above as specified in the appeal will remain under management restrictions imposed by Section 603 of the Federal Land Policy and Management Act pending disposition of the appeal by IBLA.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, Utah BLM State Office, (801) 524–3136.

Dated: November 22, 1983.

Roland G. Robison,

State Director, Utah.

[FR Doc. 83-33011 Filed 11-29-83; 8:45 am]

BILLING CODE 4310-DQ-M

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[1] This is a new unit, originally considered part of UT-040-247 (Paria-Hackberry).

[2] New WSA created UT-060-068C (Jack Canyon).

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting Raymond A. Hicks at 303–231–3147. Comments and suggestions on the requirement should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk officer for the Department of the

Interior, Office of Management and Budget, Washington, D.C. 20503

Title: Request for Processing Allowance or for Transportation Allowance

Bureau Form Number: Form MMS–4109 and Form MMS–4110

Frequency: Annual

Description of Respondents: Lessees of Federal and Indian Lands who process the royalty portion of gas to recover gas products or who transport a portion of oil and/or gas to a sale point remote from the lease

Annual Responses: 3,700

Bureau Clearance Officer: Dorothy Christopher, 703–435–6213

Dated: November 10, 1983.

Robert E. Boldt,

Associate Director for Royalty Management.

[FR Doc. 83–32009 Filed 11–29–83; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Draft Environmental Impact Statement and Intent to Hold Public Hearings

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability for Environmental Impact Statement/ Environment Impact Report.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County and California State Lands Commission have jointly prepared a draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Exxon Santa Ynéz Unit/Las Flores Canyon Development and Production Plan proposed for the western Santa Barbara Channel, offshore Santa Barbara County, California. Single copies of the draft EIS can be obtained from Santa Barbara County, Resource Management Department, Energy Division, 1226 Anacapa Street, Santa Barbara, California 93101. Technical appendices have been prepared for each issue area and provide detailed supporting data for the draft EIS/EIR. The technical appendices may be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

Air Quality, Climatology and Meteorology, Geology, Surface Water, Ground Water, Marine Water Quality, Cumulative Impacts, Cultural Resources, Terrestrial Biology, Marine Biology, Systems Safety and Reliability, Socio-economics, Physical Oceanography, Project Alternatives.

Supporting documents available upon request are:

Exxon Pipeline Feasibility Study prepared for Santa Barbara County Resource Management Department by Purvin and Gertz, Inc.

County Staff Report on the Purvin and Gertz Study.

Air Quality Impacts—Minerals Management Service Analysis.

Copies of the draft EIS will also be available for review in the following public libraries:

California State Poly Library, DS 56D, Document Section, San Luis Obispo, CA 93401

County of Ventura Library, Documents Section, P.O. Box 771, Ventura, CA 93001

Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101

University of California Library, Santa Barbara Campus, Santa Barbara, CA 93117

County of Los Angeles Public Library, Govt. Pub. Unit, 330 W. Temple, Los Angeles, CA.

Long Beach Public Library, Govt. Pub. Dept., Ocean & Pacific, Long Beach, CA 90802

State Library, Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, CA 95814

Joint Federal/State/County public hearings are scheduled from 1:00 to 5:00 P.M. and 7:00 P.M. to 10:00 P.M. on January 10, 1984 at the Santa Barbara County Board of Supervisors Hearing Room, Fourth Floor, 101 East Anapamu Street, Santa Barbara, California. The purpose of the hearings is to receive oral and written testimony regarding the draft EIS/EIR prepared for the proposed project. The hearing will provide the Minerals Management Service with additional information to help evaluate the potential effects associated with those aspects of the project subject to Federal approval.

The MMS will accept written testimony and comments on the Draft EIS until January 23, 1984. Comments should be addressed to the Regional Manager, Pacific

OCS Region, 1340 West Sixth Street, Los Angeles, California 90017. Agencies, interested groups or individuals needing further information should call Steve Alcorn at (213) 688–4418.

After testimony and comments have been reviewed and analyzed, a final EIS/EIR will be prepared.

Dated: November 21, 1983.

William E. Grant,

Acting Regional Manager, Pacific OCS Region.

[FR Doc. 83–31975 Filed 11–29–83; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332–170, A Competitive Assessment of the U.S. Wood and Upholstered Household Furniture Industry, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposals

(1) Number of forms submitted: three

(2) Title of form: Questionnaire to U.S. (Producers) (Importers) (Purchasers) of Wood and Upholstered Household Furniture

(3) Type of request: new

(4) Frequency of use: nonrecurring

(5) Description of respondents: U.S. producers, importers, and purchasers of wood and upholstered household furniture,

(6) Estimated number of respondents: 155

(7) Estimated total number of hours to complete the forms: 3,300

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

(9) Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Charles Ervin, the USITC agency clearance officer (tel. no. 202–523–4483). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Officer

for U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436).

Issued: November 21, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-32059 Filed 11-29-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-209 (Preliminary) and 731-TA-157 Through 160 (Preliminary)]

Carbon Steel Wire Rod From Argentina, Mexico, Poland, and Spain

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: November 23, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-209 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(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 Spain of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States (TSUS), upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of investigations Nos. 731-TA-157 through 160 (Preliminary) 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 following countries of carbon steel wire rod, provided for in TSUS item 607.17, which are alleged to be sold in the United States at less than fair value:

Argentina, 731-TA-157 (Preliminary)
Mexico, 731-TA-158 (Preliminary)
Poland, 731-TA-159 (Preliminary)
Spain, 731-TA-160 (Preliminary)

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy, Office of Investigations, U.S. International Trade Commission, 701 E St. NW., Washington, D.C. 20436, telephone 202-523-1369.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 23, 1983, by counsel on behalf of Atlantic Steel Company, Continental Steel Co., Georgetown Steel Corp., North Star Steel Co.—Texas, and Raritan River Steel Company. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petition, or by January 9, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in additional of 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 these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written Submissions

Any person may submit to the Commission on or before December 16, 1983, a written statement of information pertinent to the subject matter of these 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 Date." Confidential submissions must conform with the requirements of § 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 these investigations for 9:30 a.m. on December 14, 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, Mr. Daniel Leahy (202-523-1369), not later than December 9, 1983, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

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 Mr. Leahy.

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 25, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-32056 Filed 11-29-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigtation No. 337-TA-152]

Certain Plastic Food Storage Containers; Commission Determination not to Review Initial Determination Joining Certain Respondents and Terminating Other Respondents

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) (Order No. 18) issued by the Commission's presiding officer on November 1, 1983, joining Lamarle B.V. and International Porcelain Inc. as respondents to the above-captioned investigation and terminating David Y. Lei, Morris A. Lauterman, and Peter Marcar as respondents to the investigation.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983 (to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: The Commission has received neither a petition for review of the I.D. nor comments from other Government agencies. As the Commission has determined not to review the I.D., the I.D. has become the Commission's determination in this matter.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

Issued: November 25, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-32058 Filed 11-29-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation Nos. 337-TA-148 and 337-TA-169]

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Notice of Commission Decision Not To Review Initial Determination Designating Inv. No. 337-TA-148 More Complicated and Consolidating That Investigation With Inv. No. 337-TA-169

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination designating investigation No. 337-TA-148 more complicated and consolidating that investigation with investigation No. 337-TA-169. Accordingly, the initial determination has become the Commission's determination with respect to this matter.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On November 3, 1983, a preliminary conference was held in the above-captioned investigations regarding consolidation. Viscofan S.A., a respondent in both investigations, moved at the conference to designate investigation No. 337-TA-148 more complicated. No party opposed the motion. The presiding officer issued an initial determination (Order No. 16) on November 7, 1983, granting Viscofan's motion to designate investigation 337-TA-148 more complicated and consolidating the two investigations.

The deadline for petitions for review and comments from other government agencies was November 21, 1983, and none were received.

The purpose of the more complicated designation is to allow investigation No. 337-TA-148 to be considered in the same time frame as investigation No. 337-TA-169. Because these investigations involve many similar and complex issues which will be more efficiently and fully heard if the investigations are consolidated, the Commission has decided not to review the initial determination designating investigation No. 337-TA-148 more complicated.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Gracia M. Berg., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

By order of the Commission.

Issued: November 22, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-32057 Filed 11-29-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-173]

Certain Valves; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 26, 1983, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Clow Corp., Executive Plaza East, 1211 West 22nd Street, Oakbrook, Illinois 60521. The complaint was supplemented by financial data filed on November 14, 1983 and by a motion for temporary relief filed on November 16, 1983. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain valves into the United States, or in their sale, by reason of alleged infringement of claims 1, 3-5 (inclusive), and 8-13 (inclusive) of U.S. Letters Patent 3,442,488. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct expedited termporary relief proceedings, and issue a termporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and a temporary cease and desist order. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 21, 1983, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain valves

into the United States, or in their sale, by reason of alleged infringement of claims 1, 3–5 (inclusive), and 8–13 (inclusive) of U.S. Letters Patent 3,442,488, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e)(1) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on November 18, 1983, shall be forwarded to the presiding officer for an initial determination pursuant to § 210.53(b) of the rules;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Clow Corp., Executive Plaza East, 1211 West 22nd Street, Oakbrook, Illinois 60521

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Vanessa S.P.A., 29018 Lugagnano Val D'Arda, Piacenza, Italy
Vanessa Valve Corp., P.O. Box 363, Whippany, N.J. 07981
Associated Flow Control, Inc., 30 Beta Ct., San Ramon, CA 94583
The Valve Co., P.O. Box 900, 885 Banfield Road, Portsmouth, N.H. 03801
Industrial Concepts, Route 5, Box 419W, Denham Springs, LA 70726
Vanessa Valve Corp., P.O. Box 1127, Stafford, TX 77477
Valve Services, Inc., 13060 E. Firestone Blvd., Santa Fe Springs, CA 90670
Chicago Automation Services, 625 W. University Dr., Arlington Hgts., IL 60004
Almex Alaska, P.O. Box 10–1389, Anchorage, AK 99511

(c) Harold Brandt, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 16, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and § 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Harold Brandt, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–8498.

By order of the Commission.

Issued: November 23, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-32055 Filed 11-29-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-133]

Certain Vertical Milling Machines and Parts, Attachments, and Accessories Thereto; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order Agreement; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (I.D.) (Order No. 50) granting a joint motion to terminate this investigation with respect to respondent Kiheung Machinery Works, Ltd. (Kiheung) on the basis of a consent order agreement.

Authority: 19 U.S.C. 1337, 47 FR 25134, June 10, 1982 and 48 FR 2025, May 5, 1983, and §§ 210.53 (c), 210.53(h), 211.20, and 211.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.53 (c) and (h) and 19 CFR 211.20 and 211.21).

SUPPLEMENTARY INFORMATION: The Commission published notice of the I.D. in the **Federal Register** of October 31, 1983, 48 FR 50178. The Commission has not received a petition for review of the I.D. or comments from government agencies or the public.

The Commission has determined not to review the initial determination terminating Kiheung as a respondent and issuing the consent order. The consent order allows Kiheung to continue importing and selling vertical milling machines that do not infringe Textron alleged common law trademark rights. The consent order identifies machines that do not violate the order. Thus, available alternatives to the Textron's machine do exist. Furthermore, the provisions regarding other alleged unfair acts will not adversely affect the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles, or the U.S. consumer. Kiheung can sell and advertise its products through other permissible means.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0189.

Issued: November 23, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-32060 Filed 11-29-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[AB 32 SDM]

Rail Carriers; Boston and Maine Corp.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Boston and Maine Corporation has filed with the Commission its amended color-coded system diagram map in docket No. AB 32 SDM. The Commission on October 17,

1983, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 32 SDM.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-31967 Filed 11-29-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30321]

Rail Service Abandonment; Southern Pacific Transportation Co.; Exemption in Terrebonne Parish, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Southern Pacific Transportation Company of a 0.59-mile line segment in Terrebonne Parish, LA, subject to standard labor protection.

DATES: This exemption shall be effective on December 30, 1983. Petitions to stay this decision must be filed by December 12, 1983. Petitions for reconsideration must be filed by December 20, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30321 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

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: November 21, 1983.

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

James H. Bayne,

Acting Secretary.

[FR Doc. 83-31968 Filed 11-29-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Proposed Preliminary Settlement in Action To Enjoin Release of Hazardous Wastes; Westinghouse Electric Corp., et al.

In accordance with Departmental Policy 28 CFR 50.7, 38 FR 19029, notice is hereby given that on November 21, 1983, a proposed Stipulation and Order and attached Exhibit A to Stipulation and Order between the United States and Westinghouse Electric Corporation in *United States of America and Environmental Management Board of the State of Indiana* v. *Westinghouse Electric Corporation* v. *Monsanto Company*, No. IP-83-9-C, was lodged with the United States District Court for the Southern District of Indiana.

The United States filed a complaint and motion for preliminary injunction in January, 1983 against Westinghouse Electric Corporation seeking remedial action and cost recovery at two sites in Southern Indiana ("Neal's Landfill" and "Neal's Dump") where Westinghouse is alleged to have disposed of capacitors containing polychlorinated bipheyls ("PCBs"), other PCB contaminated waste and other hazardous waste. The Complaint was filed under the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607. The Stipulation and Order and attachments resolve the United States' claim for preliminary injunctive relief. It is signed by representatives of the United States and Westinghouse. The measures that Westinghouse has agreed to perform at the two sites include the following:

(a) Construct security fences around the sites;

(b) Post warning signs;

(c) Remove and dispose of capacitors or capacitor parts exposed on the surface and PCB stained soil in the vicinity of the capacitors;

(d) Construct surface water diversion ditches at Neal's Landfill;

(e) Implement a uniform two foot compacted soil cover at selected areas of Neal's Landfill;

(f) Install erosion control fences to trap PCB laden sediments at both sites;

(g) Seed both sites to insure perennial vegetation growth; and

(h) Perform certain studies at the sites.

Except for grading, seeding and capping at Neal's Landfill, which is to be completed by no later than July 1, 1984, the work is to be performed within 110 days of the date of the entry of the Stipulation and Order by the Court.

The Stipulation and Order Provides that the perliminary remedial work to be performed by Westinghouse is without prejuidice to the United States' claims for final remedial relief or to Westinghouse's defenses to the action and does not constitute any admission by either party.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments related to the proposed Stipulation and Order and attachments. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States of America and Environmental Management Board of the State of Indiana* v. *Westinghouse Electric Corporation* v. *Monsanto Company*, D.J. Ref. No. 90-7-1-212.

The proposed Stipulation and Order and attachments may be examined at the Office of the United States Attorney, United States Courthouse, Room 274, 46 East Ohio Street, Indianapolis, Indiana 46204, and at the environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Stipulation and Order and attachments may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. If requesting a copy, please enclose a check in the amount of $4.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-32114 Filed 11-29-83; 8:45 am]

BILLING CODE 4410-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the "Paperwork Reduction Act of 1980" (44 U.S.C. Chapter 35), this notice announces a proposed revision of two forms which collect information from the public which have been submitted to OMB for clearance.

1. Standard Form 171, Application for Federal Employment (formerly, Personnel Qualifications Statement), and Standard Form 171–A, Continuation Sheet, comprise the major appliction forms used by applicants for Federal employment. OPM is responsible for open competitive examinations for admission to the competitive service in accordance with section 3302, 5 U.S.C.

2. Standard Form 86, Personnel Investigation Questionnaire (formerly, Security Investigations Data for Sensitive Position), is completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct investigations required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, by Executive Order 10577 (5 CFR Rule V) issued Novembr 23, 1954, or by various public laws.

For copies of either proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATES: Comments on these proposals should be received on or before December 12, 1983.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., Room 6410, Washington, D.C. 20415; and

Frank Reeder, information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632–7720.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-32053 Filed 11-29-83; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13638; 812-5636]

Hutton Telephone & Telecommunications Tax-Advantaged Trust; Application

November 23, 1983.

Notice is hereby given that Hutton Telephone & Telecommunications Tax-Advantaged Trust ("Applicant"), One Battery Park PLaza, New York, New York, 10004, registered under the Investment Company Act of 1940 ("Act"), filed an application on August 23, 1983, and an amendment thereto on October 28, 1983, requesting an order pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and Rule 22c–1 thereunder, to the extent necessary to permit Applicant to assess a contingent deferred sales charge on redemptions of its initial future series of shares, and to permit the waiver of the contingent deferred sales charge under certain circumstances. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant states that it was organized as a Massachusetts business trust on May 26, 1983 and filed its registration statement on Form N–1 under the Securities Act of 1933, and the Act, on July 28, 1983. It is further stated that E. F. Hutton & Company Inc. serves as Applicant's investment adviser, and as distributor of its shares. Applicant consists initially of one series, it is stated. Applicant further states that it invests in the securities of issuers in the telephone and telecommunications industries, such as American Telephone and Telegraph Company ("AT&T"), and upon the divestiture by AT&T of its local telephone operations pursuant to the consent decree entered in proceedings brought against AT&T by the United States Department of Justice, the regional holding companies into which the 22 divested operating companies will be grouped (the "Regional Companies"), as well as other companies in the telephone and telecommunications and related industries.

Applicant states that until recently, mutual funds similar to Applicant had traditionally imposed an up-front sales charge. In recent years, however, a number of funds have determined to eliminate the initial sales charge, it is stated, and to substitute therefor an annual distribution fee payable by the fund and a contingent deferred sales charge imposed at the time of redemption (if at all). Applicant proposes to eliminate its initial sales charge, thereby enabling purchasers to have the proceeds of their purchase payments fully invested from the time they are made, and in lieu of the initial sales charge, to impose a contingent deferred sales charge, which would be deducted from the proceeds of certain redemptions of Applicant's shares. In no event could the account of such charges, in the aggregate, exceed 5% of the aggregate purchase payments made by the investor, Applicant states.

Such contingent deferred sales charge, it is further stated, would be assessed if an investor should redeem an amount which were to cause the value of his account to be reduced below the total dollar amount of purchase payments made by him during the six full or partial calendar years preceding such redemption. Accordingly, Applicant notes, no contingent deferred sales charge would be imposed when the investor redeems amounts derived from (1) increases in the value of payments during the previous six full or partial calendar years, or (2) purchase payments made more than six such calendar years prior to the redemption. In addition, it is stated, the contingent deferred sales charge would be waived on redemptions following the death or disability, as defined in Section 72(m)(7) of the Internal Revenue Code of 1954 ("Code"), of a shareholder.

It is stated further that where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of full or partial years since the investor made the purchase payment from which an amount is being redeemed, starting at a maximum of 5% in the first year decreasing 1% for each additional calendar year since purchase.

Applicant further states that the amount of the contingent deferred sales charge (if any) is calculated by determining the date on which the purchase payment which is the source of the redemption was made—on a first in, first out basis—and applying the appropriate percentage to the amount of the redemption subject to the charge.

Applicant believes that the imposition of the contingent deferred sales charge is fair and is in the best interests of shareholders. Applicant contends that the proposed arrangement would enable shareholders to enjoy the advantages of having a greater portion of their investment dollars working for them from the time of their purchase of Applicant's shares. Moreover, it is noted, such a sales charge would apply only to redemptions (during the first six full or partial calendar years) of amounts representing purchase payments; it would not apply to increases in the investor's account through increases in net asset value per share or reinvestments of any distributions to shareholders.

Applicant states further that it finances its own distribution expenses

pursuant to a plan adopted under Rule 12b-1 under the Act ("Distribution Plan"). It is stated that under the Distribution Plan, an annual fee is paid by Applicant to E. F. Hutton as reimbursement for expenses incurred by E. F. Hutton in connection with the sale of Applicant's shares. These expenses included promotional costs, sales administration and related sales expenses and sales commissions, it is stated. Applicant states that distribution fees would be calculated on the basis of 1.0% per annum of the lesser of (i) aggregate gross sales of Applicant's shares (not including reinvestment of dividend or capital gain distributions by Applicant, if any), less the aggregate dollar amount of any redemptions subject to the contingent deferred sales charge, or (ii) average daily net assets of Applicant.

Applicant asserts that where amounts attributable to purchase payments are redeemed (and thus discontinue supporting the annual distribution charge), it would be fair (1) to impose on the withdrawing shareholder a lump-sum payment reflecting approximately the amount of distribution expense which has not been recovered through annual payments under the Distribution Plan, and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which Applicant's distribution fees are calculated. Thus, it is contended, the amount, computation and timing of the contingent deferred sales charge would promote fair treatment of all shareholders, while permitting Applicant to offer investors the advantage of having their purchase payments fully invested immediately.

As stated above, Applicant proposes to waive its contingent deferred sales charge with respect to any redemption which follows the death or disability (as defined in Section 72(m)(7) of the Code) of a shareholder. Applicant states that this waiver would apply to both total and partial redemptions, but only to redemptions of shares held at the time of death or initial determination of disability.

Applicant submits that imposition of the contingent deferred sales charge in the manner described above would not cause shares of the Applicant to fall outside the definition of "redeemable securit(ies)" set forth in Section 2(a)(32) of the Act, and Applicant believes, therefore, that it qualifies as an open-end company within the meaning of Section 5(a)(1) of the Act. Applicant further asserts that the contingent deferred sales charge would in no way restrict a shareholder from receiving his proportionate share of the current net assets of Applicant, but would merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. Although the contingent deferred sales charge is not, Applicant states, a redemption charge in the ordinary sense, Applicant points out that the conditions of Section 10(d) of the Act contemplate that an investment company may both be an open-end company and impose a discount from net asset value on redemption of its shares. However, in order to remove any uncertainty in this regard, Applicant requests an exemption from the operation of Section 2(a)(32) of the Act to the extent necessary to permit it to qualify as an open-end company under Section 5(a)(1) of the Act while implementing its proposed contingent deferred sales charge proposal.

Applicant further asserts that the proposed contingent deferred sales charge qualifies as a "sale load" within the meaning of Section 2(a)(35) and that the proposed charge is consistent with the intent of that definition. It is stated that the contingent deferred sales charge would be paid to Applicant's distributor to reimburse it solely for expenses related to the sale of shares, and it is therefore submitted that this proposed arrangement would fall within the definition in Section 2(a)(35) of a sales load, but for the timing of the imposition of the charge. Thus its contingency upon the occurrence of an event which might not occur, it is stated, does not change the basic nature of this charge, which is in every other respect a sales charge. Nevertheless, Applicant requests an exemption from the provisions of Section 2(a)(35), to the extent necessary to implement the proposed arrangement.

Applicant asserts, in addition, that implementation of the proposed contingent deferred sales charge would in no way be violative of Section 22(c) or Rule 22c-1 thereunder. Applicant states that when a redemption of its shares is effected, the price on redemption will be based on current net asset value and the contingent deferred sales charge will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, in order to avoid any possibility of a question being raised as to the potential applicability of Section 22(c) and Rule 22c-1, Applicant requests an exemption from the operation of the provisions of Rule 22c-1 to the extent necessary or appropriate to permit Applicant to impose the proposed contingent deferred sales charge.

Applicant specifically asserts further that its proposal to waive the contingent deferred sales charge with respect to redemptions following the death or disability of a shareholder is consistent with Applicant's investment purposes, as Applicant is designed for long-term investors and not for investors that intend to liquidate their investments after a short period. In situations where the contingent deferred sales charge will be waived, Applicant contends that the redemption is unforeseen by the shareholders at the time of purchase (*i.e.*, resulting from the extraordinary circumstances of death or disability). Accordingly, Applicant believes that the circumstances of the waiver would not be inconsistent with the Applicant's objectives or the investor's initial *bona fide* intention to make a long-term investment.

Applicant submits that the exemption requested is appropriate and in the public interest, is consistent with the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant therefore requests that the Commission issue an order under Section 6(c) of the Act granting the exemption as requested.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31982 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13639; 811-3405]

National Government Reserves, Inc.; Application

Notice is hereby given that National Government Reserves, Inc. ("Applicant") 605 Third Avenue, New

York, New York, 10158, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified management investment company filed an application on October 11, 1983, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicant states that it filed its notification of registration and registration statement under the Act on February 22, 1982. According to the application, on September 14, 1983, Applicant has 670,000 shares of beneficial interest outstanding. Those shares were the only class of Applicant's shares outstanding and had a net asset value of $1 per share. Applicant states that on September 14, 1983, its aggregate net value was $670,000.

Applicant represents that on September 16, 1983, its Board of Directors adopted resolutions recommending the liquidation and dissolution of Applicant, and authorizing the officers of Applicant, upon approval of the proposed dissolution by the remaining shareholder of Applicant, to take all necessary action to distribute the remaining assets of Applicant and to wind up its affairs. Applicant further represents that on the same date the sole remaining shareholder of Applicant approved such action. Applicant states that there was on distribution of any proxy material to Applicant's securityholders regarding its liquidation.

Applicant states that in connection with the liquidation, on September 15, 1983, Applicant's sole remaining shareholder redeemed approximately 669,000 outstanding shares of Applicant and received as distribution of the proceeds in an amount of $669,000. On October 6, 1983, the shareholder redeemed the remaining 1,000 shares of Applicant's outstanding common stock and received proceeds in the amount of $1,000, consisting of the entire remaining assets of Applicant. Applicant further states that it had no securityholders at the time of the filing of the application. Applicant states that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding-up of its affairs. Applicant further states that it has filed Articles of Dissolution and related documents pursuant to the requirements of Maryland law, but remains in existence as a carporation in the State of Maryland pending action by state authorities on its request for dissolution.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary

[Release No. 13640; 812-5668]

Sparbankernas Bank (Swedbank); Application c/o Brown, Wood, Ivey, Mitchell & Petty

November 23, 1983.

Notice is hereby given that Sparbankernas Bank, which uses the name Swedbank in connection with its operations outside Sweden ("Applicant"), One World Trade Center, New York, New York 10048 filed an application on October 6, 1983, and an amendment thereto on November 7, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), amending a 1980 order of the Commission to extend the exemption from all provisions of the Act granted thereunder to Applicant to include a Delaware finance corporation to be wholly-owned by Applicant and known as Swedbank, Inc. (the "Proposed Subsidiary"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant currently sells its commercial paper in the United States under an order granted to it by the Commission pursuant to Section 6(c) of the Act and set forth in Investment Company Act Release No. 11348, September 10, 1980 (the "1980 Order"). The application makes reference to the 1980 Order and related application on file with the Commission for a description of the business, finances and regulation of Applicant. Applicant represents that there have been no material changes in the information set forth in the application for the 1980 Order.

Applicant states that the Proposed Subsidiary will be a corporation organized in 1983 under the laws of Delaware whose operations will be conducted from offices in Sweden and that all of its issued and outstanding capital stock will be owned by Applicant. The Proposed Subsidiary will be established for the sole purpose of obtaining funds in the commercial paper market to be used by Applicant and its other subsidiaries.

Applicant states that the Proposed Subsidiary will issue and sell in the United States short-term unsecured negotiable promissory notes of the type generally referred to as commercial paper (the "Notes") with maturities not to exceed 240 days in bearer form and denominated in United States dollars. Applicant states that the notes will be issued in the minimum denomination of $100,000; that it is presently intended that not in excess of $150,000,000 of the notes will be outstanding at any one time, and that the notes will not have any provisions for renewal at the option of the Proposed Subsidiary, Applicant or the holders thereof or for automatic roll-over.

Applicant states that the notes issued and sold by the Proposed Subsidiary will be unconditionally guaranteed by Applicant. Applicant asserts that while such guarantee constitutes a separate security for purposes of the Act, the offer and sale of such security is covered by the 1980 Order granted applicant by the Commission. According to the application, proceeds from sales of the notes (except for amounts needed to repay maturing notes) will be made available solely to Applicant and its other subsidiaries in the form of loans or deposits for use in repaying Applicant's maturing commercial paper and in funding current transactions of Applicant and its other subsidiaries.

Applicant states that the notes will be direct liabilities of the Proposed Subsidiary and will rank *pari passu* among themselves and prior to the Proposed Subsidiary's capital stock. Applicant further states that in the event the Proposed Subsidiary issues other debt securities, the Notes will rank

equally with any other unsecured unsubordinated indebtedness and prior to any subordinated indebtedness. It is stated that Applicant's guarantee will rank *pari passu* with all other unsecured unsubordinated indebtedness of Applicant, including Applicant's deposit liabilities, and prior to any subordinated indebtedness of Applicant's share capital.

Applicant represents that the notes, based on their maturity, the manner of the offering and the Proposed Subsidiary's intention to use the proceeds therefrom to finance the current transactions of the Applicant and its other subsidiaries, will qualify them for the exemption from registration under Section 3(a)(3), of the Securities Act of 1933 (the "1933 Act"). According to the application, the Proposed Subsidiary will not issue and sell any notes until it has received an opinion of its special legal counsel in the United States that the Notes and the related guarantee of Applicant would be entitled to the Section 3(a)(3) exemption. Applicant does not request Commission review or approval of such opinion. Applicant represents that the Notes and any future issue of the Proposed Subsidiary's securities in the United States will have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and that the Proposed Subsidiary's special legal counsel in the United States shal certify the receipt of such rating; provided, however, that no such rating need be obtained with respect to any such issue if in the opinion of the Proposed Subsidiary's special legal counsel, such counsel having taken into account for the purposes thereof the doctrine of integration referred to in Rule 502 the 1933 Act and relevant no-action letters made public by the Commission, an exemption from registration is available under Section 4(2) of the 1933 Act.

Applicant states that the Notes will be sold by the Proposed Subsidiary to a commercial paper dealer in the United States which, as principal, will reoffer them to investors in the United States. In certain cases, however, the commercial paper dealer may offer the Notes as agent. Applicant undertakes, on behalf of the Proposed Subsidiary, that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold to institutional investors, wealthy individuals and other purchasers of the type that normally participate in the commercial paper market. Applicant also undertakes, on behalf of the Proposed Subsidiary, that the dealer will provide to each offeree of the Notes prior to purchase a memorandum which describes the business of both Applicant and the Proposed Subsidiary and contains the most recent publicly available fiscal year-end audited balance sheet and income statement of Applicant. Applicant represents that the memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will describe any material differences between Swedish and United States generally accepted accounting principles applicable to commercial banks. Applicant states such memorandum will be updated periodically to reflect material changes in the financial status of Applicant and its subsidiaries, including the Proposed Subsidiary.

The Proposed Subsidiary may in the future offer other debt securities for sale in the United States. Applicant represents that any future offerings by the Proposed Subsidiary of the securities in the United States will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under such Act, the availability of which is confirmed by an opinion of special United States counsel. Applicant undertakes that in no event will a future offering be made on the basis of a disclosure document less comprehensive than that used in the presently proposed offering.

Applicant, on behalf of the Proposed Subsidiary, undertakes to ensure that such a disclusure document will be provided to each offeree who has indicated an interest in such securities, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such a disclosure document will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder. Applicant consents to any order granting the relief requested under Section 6(c) being expressly conditioned upon the Proposed Subsidiary's compliance with the foregoing undertakings regarding disclosure documents.

According to the application, the Proposed Subsidiary will appoint the Corporation Trust Company, 100 West Tenth Street, Wilmington, Delaware as its agent for service of process. Applicant undertakes to appoint CT Corporation System, 277 Park Avenue, New York, New York as agent in the United States to accept service of process in any action based on Applicant's guarantees of the Notes instituted in any state or federal court by a holder of any of the Notes. Applicant further undertakes that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect to any such action. Such appointment of any agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid.

Applicant states that the officers who have signed the application have the legal authority to make binding upon the Proposed Subsidiary all of the representations and undertakings made by Applicant on behalf of the Proposed Subsidiary, which representations and undertakings are set forth in the application.

In support of the relief requested, Applicant asserts that, because of Applicant's unconditional guarantee of the Notes, purchase of the Proposed Subsidiary's Notes would be the equivalent of the purchase of the Applicant's obligations and, therefore, approval of an amendment to the 1980 Order exempting the Proposed Subsidiary under Section 6(c) would be consistent with the 1980 Order granted by the Commission to Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31984 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13641; 812-5673]

EZI Finance Ltd.; Application c/o John Merow, Sullivan & Cromwell

November 23, 1983.

Notice is hereby given that EZI Finance Ltd. ("Applicant"), 125 Broad Street, New York, New York, 10004, an Australian Capital Territory corporation, filed an application on October 12, 1983, pursuant to Section 6(c) of the Investment Company Act or 1940 ("Act"), for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant states that it was incorporated on January 17, 1983, for the purpose of obtaining funds in the commercial paper market for the use of EZ Industries Limited ("EZI") and its subsidiaries (the "EZI Group"). Applicant states further that EZI is incorporated under the laws of the State of Victoria, Australia, and has its principal office in Melbourne, Australia, and that through its subsidiaries, EZI engages in the mining of silver, lead, zinc, copper and gold ores, the production of zinc and zinc alloys, cadmium, sulphuric acid and fertilizers and the marketing of zinc metal and cadmium in Australia, the United Kingdom, Asia, India, Europe and the United States. It is represented that consolidated net sales of the EZI Group for the year ended June 30, 1983, are stated to have been approximately US $238 million and consolidated assets at June 30, 1983, to have been approximately US $622 million.

Applicant states that its outstanding capital stock is owned by EZI, and that there has not been, and undertakes that in the future there will not be, any public offering of its common shares or of any other equity security of the Applicant. Applicant proposes to issue and sell short-term negotiable promissory notes of the type generally referred to as commercial paper ("Notes") in offerings exempt from the registration requirements of the Securities Act of 1933 ("1933 Act"), by virtue of Sections 3(a)(2), 3(a)(3), or 4(2) thereof.

Applicant undertakes not to market any Notes prior to receiving an opinion of United States counsel to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act but does not request review or approval by the Commission of counsel's opinion regarding the availability of such an exemption. The Notes will be denominated in United States dollars and will be sold in minimum denominations of $100,000, it is stated.

Applicant further states that the Notes will be supported by a "direct pay", irrevocable letter of credit ("Letter of Credit") issued to Morgan Guaranty Trust Company or New York or other major commercial bank as trustee ("Depository") for the benefit of the holder of the Notes by another major commercial bank or banks ("Bank"), with the result that the Notes will have one of the three highest investment grade commercial paper ratings from at least one nationally recognized statistical rating organization, and that Applicant's United States counsel will certify the receipt of such rating. It is further stated that the Depository will be instructed to make a drawing under the Letter of Credit to obtain funds to pay each Note when it matures, thus assuring holders of Notes that they will be timely and completely repaid.

Applicant undertakes to ensure that the Notes will not be offered for sale to the general public, but instead will be sold through one or more commercial paper dealers to institutional investors and other sophisticated entities and investors of the type which ordinarily purchase commercial paper notes. While an annoucement of the establishment of the commercial paper facility may be made as a matter of record, the offering for sale of the Notes will not be otherwise advertised, it is stated. Applicant undertakes to ensure that each dealer in the Notes will, at or prior to any sale to an offeree of the Notes, provide to that offeree a memorandum describing the respective business of the Applicant and the Bank and including financial information regarding the Bank. Applicant represents that the memorandum will include a description of any material differences between the accounting principles applied in the preparation of such financial statements and generally accepted accounting principles applicable to similar companies in the United States. Such memorandum will be at least as comprehensive as those customarily used in offeing commercial paper notes in the United States, it is stated, and will be updated from time to time to reflect any material changes in the respective business and financial status of Applicant and the Bank. Applicant consents to having an order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure memoranda.

It is further stated that the bank serving as Depository will act as issuing and paying agent for the Notes. Applicant undertakes to appoint irrevocably an agent in the United States upon which process may be served in any action arising out of or based on the Notes and instituted in the Supreme Court of the State of New York, County of New York, or in the United States District Court for the Southern District of New York, and to consent to the jurisdiction of any such court in respect of any such action. Applicant also represents that although it has no present intention of doing so, Applicant may in the future offer debt securities for sale in Australia or otherwise outside the United States to persons other than nationals or residents of the United States.

Applicant asserts that it is not a person of the type to which the Act was intended to apply. Applicant represents that it has been organized for the sole purpose of obtaining funds with which the EZI Group companies may finance their business operations. None of the EZI Group companies is an investment company within the meaning of the Act, Applicant states. Applicant further represents that it will not own or hold any equity securities, or notes or other evidences of indebtedness issued by any person not a member of the EZI Group, other than temporary holdings of prime quality short-term debt instruments. Applicant also states that, other than its capital stock, which has not been and will not be offered publicly, its only outstanding securities offered or sold in the United States, or to United States nationals or residents will be the Notes and its obligations to the Bank under the Letter of Credit and related agreements (which obligations to the Banks will be guaranteed by EZI), and that all the net proceeds from the sale of Notes will be advanced to EZI Group companies.

Applicant maintains that the issuance of an order pursuant to Section 6(c) of the Act would be consistent with the protection of investors. The Notes would be supported by a "direct pay", irrevocable letter of credit issued by the Bank for the benefit of the holders of the Notes, and those holders would be entitled to timely and complete payment at maturity under the Letter of Credit. Applicant states that investors in Notes would thus rely on the credit strength of the Bank issuing the Letter of Credit, rather than on that of the Applicant.

Notice is further given that any interested person wishing to request a

hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31985 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13642; 812-5674]

Savings Bank Investment Fund, et al; Application

November 23, 1983.

In the matter of Savings Bank Investment Fund, 50 Congress Street, Boston, MA 02109; Fitchburg Savings Bank, FSB, 280 Main Street, Fitchburg, MA 02140; Home Savings Bank, FSB, 69 Tremont Street, Boston, MA 02108; Mutual Bank, FSB, 45 Franklin Street, Boston, MA 02110.

Notice is hereby given that Savings Bank Investment Fund ("SBIF"), Fitchburg Savings Bank, FSB ("Fitchburg"), Home Savings Bank FSB ("Home") and Mutual Bank fSB ("Mutual") (collectively, "Applicants") have filed an application for an order, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting certain proposed transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of relevant provisions.

According to the application, SBIF is a Massachusetts corporation organized pursuant to a special act of the Massachusetts legislature as an investment vehicle for Massachusetts savings banks, co-operative banks and a related entity. SBIF is registered under the Act as an open-end, diversified investment company. Applicants state that SBIF had issued and sold to shareholders shares of a Liquidity Series, an Equity Series and an Income Series, but the Liquidity Series and the Equity Series have been liquidated.

The Applicants further state that as of August 31, 1983, SBIF's Income Series of shares had net assets of approximately $10,247,250 held by fourteen shareholders, and the investment adviser to the Income Series is Massachusetts Financial Services Company ("MFS"), which also acts as investment adviser to Massachusetts Financial Bond Fund, Inc. ("MFB"), a registered open-end, investment company. Applicants state that Fitchburg is a federally-chartered savings bank whose President, William L. Wallace, is a director of SBIF; Home is a federally-chartered savings bank whose Senior Vice President is a director of SBIF; and Mutual is a federally-chartered savings bank whose Executive Vice President is a director of SBIF. Fitchburg, Home and Mutual, all formerly Massachusetts savings banks, own 19.51 percent, 15.5 percent, and 36.32 percent respectively of the outstanding shares of SBIF's Income Series as of August 31, 1983. Applicants further state that none of the other shareholders of the Income Series owned 5 percent or more of the outstanding shares of the Income Series at that date.

Applicants propose, pursuant to an agreement and plan of reorganization (the "Agreement") between SBIF and MFB, that MFB will acquire all the assets of the Income Series from SBIF in exchange for shares of capital stock of MFB following which the Income Series will be liquidated, and SBIF will distribute to the shareholders of the Income Series the MFB shares received in the exchange. Applicants state that the Agreement provides that each party to the reorganization is to bear its own expenses, and consummation of the reorganization is subject, among other conditions, to the receipt by MFB from each shareholder of the Income Series of an Agreement indemnifying MFB against loss which it might suffer (i) by reason of the fact that (a) MFB shall be required to pay any obligation of SBIF based on a claim not reflected in SBIF's financial statements or (b) any representation or warranty made by SBIF in the Agreement should prove to be false or erroneous or (ii) based on a claim that SBIF lacked corporate authority to consummate the transaction contemplated by the Agreement. Applicants state that the Agreement has been approved by an affirmative vote of the Boards of Directors of MFB and SBIF and has been ratified by vote of the Incorporators of SBIF.

Applicants further state that the investment objectives of SBIF's Income Series are to seek a high rate of return with capital appreciation possibilities where appropriate, consistent with the preservation of capital, while MFB's primary investment objective is to provide as high a level of current income as is believed to be consistent with prudent investment risk along with an additional objective to seek protection of shareholders' capital. Applicants further assert that each of Fitchburg, Home and Mutual beneficially owns more than 5 percent of the outstanding shares of the Income Series and each accordingly is an affiliated person of SBIF under Section 2(a)(3) of the Act. Consequently, Applicants submit that their participation in the reorganization and their receipt of MFB shares in liquidation of the Income Series might therefore be deemed a joint enterprise or arrangement with SBIF, a registered investment company, prohibited by Section 17(d) of the Act and Rule 17d–1 thereunder.

Applicants assert that shareholder Applicants will participate in the transaction on the same basis as all other shareholders of the Income Series, and the participation of shareholder Applicants and SBIF differs only in the fact that SBIF is necessarily interposed as a corporate party to the reorganization and the liquidation of the Income Series. Applicants further assert that all shareholders, including the eleven shareholders which are not shareholder Applicants, have the right to redeem at the net asset value per share, or to receive MFB shares of equivalent value to their SBIF shares if the proposed transaction is effected. Applicants submit that the interests of SBIF and the shareholder Applicants may be viewed as identical since shareholders which are not shareholder Applicants will receive the same treatment as shareholder Applicants and shareholder Applicants at present hold 71.38 percent of the outstanding shares of beneficial interest of SBIF.

Applicants state that MFS is the investment adviser of the Income Series and MFB and, therefore, is an "affiliated person" of each of them by reason of Section 2(a)(3) under the Act. Applicants assert, however, that the boards of directors of each of SBIF and MFB have made the findings required by Rule 17a–8 under the Act, and SBIF believes that the exemption from the provisions of Section 17(a) of the Act afforded by Rule 17a–8 is available to it and to MFB with respect to the reorganization transaction. Accordingly, Applicants request relief only pursuant to Section

17(d) and Rule 17d–1 thereunder to permit the merger and liquidation transactions participated in jointly by SBIF and its three shareholder affiliates.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31986 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13637; 812-5620]

Planned Investment Fund, Inc.; Application

November 23, 1983.

Notice is hereby given that Planned Investment fund, Inc. ("Applicant"), 50 Congress Street, Boston, MA 02109, registered under the Investment Company Act of 1940 ("Act") as an openend, diversified, management investment company, filed an application on August 5, 1983, for an order pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the transaction described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant states that its shares are offered for sale to the public through broker-dealers pursuant to dealer agreements with Applicant's principal underwriter, Burgess & Leith Incorporated ("Distributor"). Applicant states that a sales load of up to a maximum of 4% of the public offering price of Applicant's shares is charged on purchases of those shares.

According to the application, Applicant proposes to eliminate the front-end sales load on purchases of Applicant's shares and impose a contingent deferred sales load with respect to redemptions of shares purchased after elimination of front-end sales load. Applicant represents that the contingent deferred sales load will be imposed, except as noted below, if an investor makes a partial or complete redemption of shares purchased following elimination of the current front-end sales load with respect to which no such charge was imposed Applicant states that the contingent deferred sales load is based on a table of graded charges. Applicant represents that in no event would the amount of such charges, in the aggregate, ever exceed 4% of the lesser of (1) the net asset value of the shares redeemed, or (2) the total cost of such shares. No contingent deferred sales load will be imposed when the investor redeems: (1) Amounts derived from increases in the value of his account above the total cost of shares being redeemed due to increases in the net asset value per share of Applicant; (2) shares with respect to which Applicant did not pay a commission on issuance (including shares acquired through reinvestment of dividend income and capital gains distributions); or (3) shares held during more than four calendar years.

Applicant states that the amount of the contingent charge (if any) will be calculated by determining the year in which the purchase payment which is the source of the redemption was made, and applying the appropriate percentage to the amount of the redemption subject to the charge. Applicant states that when the deferred sales loads is imposed, the amount of the charge will be 4% if the redemption occurs during the same calendar year in which the shares bing redeemed were purchased; 3% if the redemption occurs during the next calendar year after the year of purchase; 2% if the redemption occurs during the second calendar year after the year of purchase; 1% if the redemption occurs during the third calendar year after the year of purchase; and 0% if the redemption occurs during the fourth and subsequent calendar years following the year of purchase.

Applicant states that in determining the amount of deferred sales loads it will assume that shares held the longest are the first redeemed. In addition, Applicant represents that shares held prior to imposition of the contingent deferred sales load may be redeemed without charge. Applicant submits that the proposed charge will permit its shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of Applicant's shares.

Applicant requests an exemption from Section 2(a)(32) of the Act to the extent necessary to permit it to qualify as an open-end company under Section 5(a)(1) of the Act. Applicant also requests an exemption from the provisions of Sections 2(a)(35) and 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to implement the proposed charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31987 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13636; 812-5653]

Master Reserves Tax Free Trust and Capital T Tax Free Fund; Application

November 22, 1983.

Notice is hereby given that Master Reserves Tax Free Trust and Capital T Tax Free Fund ("Applicants"), 99 High Street, Boston, Massachusetts 02110, open-end diversified investment companies registered under the Investment Company Act of 1940 ("Act"), filed an application on September 22, 1983, and amendments thereto on October 12, 1983 and October 27, 1983, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Applicants from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit Applicants to acquire rights to sell their portfolio securities to brokers or dealers.

All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act for the text of the provisions to which the exemptions applies.

Applicants are both organized as business trusts under Massachusetts law. On September 18, 1982 and on December 30, 1982, Master Reserves Tax Free Trust and Capital T Tax Free Fund respectively filed with the Commission a Registration Statement under the Investment Company Act of 1940 and the Securities Act of 1933. Applicants assert that their investment objective is to provide as high a level of current income exempt from federal income taxes as is consistent with preservation of capital and maintenance of liquidity. Applicants state that they will pursue this objective by investing primarily in short-term securities the income from which, in the opinion of counsel to the issuer, is exempt from federal income tax ("Municipal Bonds").

Applicants assert that, in accordance with Rule 2a–7 of the Act, they intend to compute their current price per share by using the "amortized cost" method of portfolio valuation. In utilizing the "amortized cost" method, the Applicants state they will satisfy the conditions established by Rule 2a–7 with respect to the maturity and quality of their portfolios, and the procedures to be adopted by their Boards of Trustees.

Applicants state that their shareholders require the ability to receive same-day redemption proceeds and that the cash needed to meet net redemptions of their shares must be obtained the same day from maturing portfolio securities or settlements arranged that day on sales of securities. The federal funds will close for transmission purposes at approximately 3:00 p.m. Therefore, according to Applicants, unless prior arrangements assuring immediate liquidity have been made, the negotiation of same-day settlements on sales of portfolio securities within the brief time available is often impossible or may require the Applicants to receive a less favorable execution price on the sale even through the securities sold have a short remaining maturity. Applicants state that other investment techniques used by taxable money-market funds to obtain liquidity are not as freely available to Applicants because they are either more expensive or would produce undesirable taxable income.

Applicants state that, under certain circumstances and conditions, they may purchase securities together with the option to resell them to the seller at an agreed-upon price or yield within a specified period prior to the maturity date of such securities. Such a right to resell is commonly known as a "stand-by commitment" or "put". Applicants state that the sole purpose for entering into transactions involving stand-by commitments is to permit Applicants to be as fully invested as practicable in Municipal Bonds, while preserving necessary flexibility and liquidity for Applicants to meet redemptions.

Applicants state that all stand-by commitments which they may acquire will have the following features: (1) They will be in writing and will be physically held by Applicants' custodian; (2) they will be exercised by Applicants at any time prior to the underlying security's maturity; (3) Applicants' right to exercise the stand-by commitments will be unconditional and unqualified; (4) they will be entered into only with broker-dealers and banks who in the Adviser's opinion present a minimal risk of default; (5) although they will not be transferable, Municipal Bonds purchased subject to such stand-by commitments could be sold to a third party at any time, even though the stand-by commitments were outstanding; and (6) their exercise price will be (i) Applicants' acquisition cost of the Municipal Bonds which are subject to the commitment (excluding any accrued interest which Applicants paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period Applicant owns the securities, plus (ii) all interest accrued on the securities since the last interest payment date during such period. Applicants state that amount payable under a stand-by commitment will be equal to the value of the underlying security determined by the amortized cost method. Applicants submit there is little risk of an event occurring that would make the amortized cost valuation of their portfolio securities inappropriate. However, Applicants represent that in the unlikely event the market or fair value of the securities in their portfolios were not substantially equivalent to their amortized cost value, it is anticipated that in order to maintain relationships with broker-dealers willing to enter into such transactions, the stand-by commitment would not be exercised and the underlying Municipal Bonds would be valued on the basis of available market information and held to maturity.

Applicants state they expect the stand-by commitments will generally be available without the payment of any specified direct or indirect consideration. However, if deemed necessary and advisable, Applicants state they will pay for stand-by commitments either separately in cash or by paying a higher price for portfolio securities that are subject to the stand-by commitments. Applicants represent that the total amount paid in either manner for outstanding "stand-by commitments" held in any Portfolio will not exceed ½ of 1% of the value of a Portfolio's total assets calculated immediately after each "stand-by commitment" is acquired.

Applicants represent that it is difficult to evaluate the likelihood of exercise or the potential benefit of a stand-by commitment. Therefore, Applicants' Boards of Trustees intend to determine that puts have a "fair value", of zero for purposes of calculating Applicants' net asset value per share, regardless of whether any direct or indirect consideration was paid. Where Applicants have paid for a stand-by commitment, its cost will be reflected as unrealized depreciation for the period during which the commitment is held.

Applicants requests an order pursuant to Section 6(c) of the Act exempting them from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit their acquisition of stand-by commitments from brokers or dealers. Applicants assert that the requested relief is appropriate, is in the public interest, and is consistent with the protection of investors. Applicants submit the proposed acquisition of stand-by commitments will not materially affect the net asset value per share of Applicants for purposes of sales and redemptions and will not pose separate material investment risks, but rather will improve the liquidity of Applicants and their ability to meet redemptions. In addition, Applicants submit the credit risks associated with stand-by commitment transactions are not extraordinary and the evaluation of those risks is substantially similar to the evaluations undertaken by Applicants with respect to repurchase agreements. Finally, Applicants assert that they will not acquire stand-by commitments to promote reciprocal practices, to encourage the sale of its shares or to obtain research services.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 19, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should

be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31986 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23130; 70-6925, et al.]

Central and South West Corp. et al.; Issuance and Sale of Long-Term Debt and Preferred Stock

November 22, 1983.

In the matter of Central and South West Corporation, P.O. Box 220164, Dallas, Texas 75222; West Texas Utilities, 301 Cypress, Abilene, Texas 79601; Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403; Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156; Public Service Company of Oklahoma, 212 East Sixth Street, Tulsa, Oklahoma 74119.

Central and South West Corporation ("CSW"), a registered holding company, and its electric utility subsidiaries, West Texas Utilities Company ("West Texas"), Central Power and Light Company ("CP&L"), Southwestern Electric Power Company, ("SWEPCO"), and Public Service Company of Oklahoma ("PSO"), have filed application-declarations with this Commission under Sections 6(a), 7, 9(a), 10, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 43, 45, 50, 62, and 65 issued under the Act.

The application-declarations set forth the subsidiaries' financing plans for 1984 and 1985. CSW proposes to make equity investments either through cash capital contributions or purchases of common stock, in total amounts up to $60 million for West Texas, $150 million for CP&L and $20 million for SWEPCO. The subsidiaries propose to issue and sell during the same period, in one or more series, long-term debt and preferred stock, $100 par value, in the following amounts: West Texas, up to $40 million aggregate principal amount of debt and 300,000 shares of stock; CP&L, up to $300 million aggregate principal amount of debt and 500,000 shares of stock; SWEPCO, up to $100 million aggregate principal amount of debt and 400,000 shares of stock; PSO, up to $60 million aggregate principal amount of debt and 400,000 shares of stock. The debt securities would be first mortgage bonds unless West Texas, CP&L, or SWEPCO is unable to meet certain charter or indenture requirements relating to minimum gross income, minimum net earnings, and expenditures for bondable property, in which case, long-term, unsecured debentures may be substituted for, or combined with, the sale of bonds.

Each series of bonds or debentures will have a term of not less than 5 nor more than 30 years, will be sold at not less than 98%, nor more than 101.75%, of the principal amount, and will be issued under appropriate indentures, as supplemented. Redemption will be restricted for the initial 5 years if it is part of a refunding at a lower effective interest cost. Each series of preferred stock will be sold at a price of not less than $100 nor more than $102.75 per share, plus accrued dividends. The terms of the preferred stock will provide for a five-year restriction on redemption as part of a refunding at a lower effective interest cost and may provide for periodic redemption through a mandatory sinking fund.

In connection with the preferred stock sales by West Texas and SWEPCO, it is also proposed that their articles of incorporation be amended to increase the authorized preferred stock ($100 par value) of West Texas from 310,000 shares, already issued, to 810,000 and SWEPCO from 1,460,000 shares, already issued to 1,186,000 shares. Based on generation and construction forecasts, West Texas foresees the need to issue an additional 500,000 shares and SWEPCO an additional 400,000 shares during the years 1984 to 1988. The proposals will be submitted for shareholder consideration at special meetings to be held on February 14, 1984. Adoption of West Texas' proposal requires an affirmative vote of the holders of two thirds of the outstanding common and preferred shares while SWEPCO's proposal requires a majority approving vote of each.

The subsidiaries intend to sell these securities pursuant to competitive bidding procedures under Rule 50 (or as Rule 50 has been modified by HCAR No. 22623), although it is indicated that they may request exceptions from competitive bidding requirements to provide for negotiated public offerings or private placements. The net proceeds from the issuance and sale of the securities, combined with the additional equity contributions from CSW, will be used for general corporate purposes including construction expenditures and retirement of short-term and long-term debt.

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 December 19, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing and will receive a copy of any notice or order issued. After said date, the applicant-declarations, 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. 83-31989 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20399; File No. SR-BSE-83-14]

Self-Regulatory Organizations; Proposed Change by Boston Stock Exchange, Inc., Relating to the Amendment of the Odd-Lot Execution Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1983, the Boston Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed change as described in Items I, II, and III below, which Items publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The proposed amendment to Chapter XII establishes a nine month pilot program for the execution of standard odd-lot market orders to purchase or sell shares in AT&T and the equity issues created as a result of the divestiture.

The procedures established are to be considered as "interim rules" and would supersede any other rule inconsistent therewith. During the nine-month duration of the pilot, the Exchange will monitor the activity in the AT&T divestiture issues, expecially with respect to the effect which the procedures described herein have on the pricing of odd-lots. The test of the amendment is as follows:

Paragraph 2126

Procedures for the Pricing of Standard Odd-lot Market Orders in AT&T and the Equity Issues Created as a Result of the Divestiture.

Sec. 1

(a) The provisions of this section shall apply specifically to the following issues: American Information Technologies Corporation, American Telephone and Telegraph Co., Bell Atlantic Corporation, Bellsouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation and U.S. West, Inc.

(b) These procedures are "interim rules" for the operation of a nine month pilot and supersede any other rule inconsistent therewith.

(c) All odd-lot orders shall be time-stamped immediately by the specialist upon receipt. Standard odd-lot market orders received prior to the opening shall be executed at the consolidated opening price. No odd-lot differential will be charged on these orders.

(d) Standard odd-lot market orders received after the opening will receive an execution price based on the best consolidated quotation in the stock at the time such order is received by the specialist, i.e., buy orders will be executed on the best consolidated offer and sell order will be executed on the best consolidated bid. No odd-lot differential will be charged on these orders.

(e) In instances in which quotation information is not available (e.g., when the quotation in a "non-firm" mode) standard odd-lot market orders will be executed on the last consolidated round-lot sale. No odd-lot differential will be charged on these orders.

(f) Standard odd-lot market orders received after a trading halt and prior to the resumption of trading will be executed at the price at which trading resumes without an odd-lot differential.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received. The text of these statements may be examined at the places specified in Item IV. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed amendment provides for the execution of standard odd-lot market orders for AT&T and divestiture issues at prices based on the best composite quotation and that no odd-lot differential would be charged for these orders. Orders received prior to the opening will be executed at the opening price and no differential on these orders will be charged.

(b) Implementation of the proposed pilot will provide for efficient executions of the odd-lot orders included in the pilot and is consistent under the provisions of the Securities Exchange Act of 1934.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed amendment imposes any burden on competition and is in the best interest of the public by not charging an odd-lot differential.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed amendment was reviewed with all Specialists affected by the change and there was unanimous agreement that the amendment was in the best interest of the investing public.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission has found good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31994 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6928; Rel. No. 23131]

The Connecticut Light and Power Co.; Proposal for Pollution Control Financing; Exception From Competitive Bidding

November 23, 1983.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and requests an exception from competitive bidding pursuant to Rule 50(a)(5) on the basis that competitive bidding is inappropriate.

The Industrial Development Authority of the State of New Hampshire ("Issuer"), intends to issue up to $10 million of tax-exempt pollution control revenue bonds ("Bonds") maturing not more than 30 years from the date of issuance. The Bonds would be issued under an Indenture among CL&P, the Issuer, and a Trustee. Under a Financing Agreement, the proceeds would be loaned to CL&P and would be used to pay or reimburse a portion of the cost of pollution control facilities at the Seabrook nuclear power station. CL&P would make payments corresponding to the principal, interest, and premium, if any, on the Bonds as they become due and pay the fees and charges of the Issuer and the Trustee.

The Bonds would be of a kind generally known as Variable Rate Demand Bonds or Low Floater Bonds ("Low Floater Bonds") which are used for short-term, tax-exempt investments. CL&P expects to derive significant interest savings and flexibility because of the variable interest rate and remarketability of the Bonds. The 1983 YTD average Low Floater Rate was 4.92 percent as compared with the average 13-week Treasury Bill Rate of 8.44 percent, the average prime rate of 10.81 percent, the Bond Buyer Index for 30-year tax-exempt bonds of 9.8 percent, and the average 30-year Treasury Bonds Rate of 10.62 percent.

The interest rate would be determined weekly by an agent ("Remarketing Agent") based on the most recent Kenny index, which is based on 30-day yield evaluations at par of the securities of at least 20 issuers of tax-exempt securities of the highest credit rating. The Remarketing Agent would have the authority to adjust the interest rate within a range of 20% above and 20% below the most recently published Kenny index. CL&P states that to date virtually all weekly rate settings for Low Floater Bonds have been at the specified index rate. If the Kenny index ceases to be available, the interest rate would be based upon 65% of the 13-week Treasury Bill Rate.

The Bonds may be converted at CL&P's option to fixed interest rate bonds. The variable rate Bonds would be redeemable at any time at CL&P's direction, in whole or even multiples of $1 million from time to time, at a price for variable rate Bonds of 100% plus accrued interest. If converted to fixed rate obligations, the Bonds would be redeemable at any time at prices between 103% and 100% plus accrued interest.

Bondholders may tender the Bonds in multiples of $100,000 for purchase to the Remarketing Agent on any date. The Remarketing Agent would be obligated to use its best efforts to secure other purchasers of Bonds having a principal amount equal to that of the Bonds being tendered. The initial Remarketing Agent is expected to be Citibank, N.A. which would be paid a fee of $.50 per $1,000 principal amount of the Bonds remarketed but not more the 1/32 of the outstanding Bonds per quarter, plus out-of-pocket expenses. If the Remarketing Agent is unsuccessful in selling the tendered Bonds, it may draw upon a letter of credit ("Letter of Credit") from Citibank for the funds required to pay the tendering bondholder.

The Letter of Credit could be drawn on up to the principal amount of the Bonds, plus $667,000 to cover four months' interest on the Bonds and, to the extent not required for interest payments, to provide reimbursement to the Issuer, the Trustee, and the Remarketing Agent for any costs that might be incurred in enforcing their rights under various agreements. CL&P would repay all amounts drawn under the Letter of Credit. Repayment would be made at the earlier of five years after the date of the drawing, the final maturity of the Bonds, or when the Bonds are remarketed. The Letter of Credit matures ten years from the date of issuance but can be extended by Citibank. If the termination date is not extended, CL&P will have to exercise its right of redemption to redeem all of the outstanding principal amount of the Bonds.

During the first three years following a drawing under the Letter of Credit, the interest rate thereon would, at CL&P's election, be (i) Citibank's Alternate Base Rate, (ii) 5/8 of 1.00% above the Domestic Money Market Bid Rate; or (iii) the Reference Rate quoted at the time of the drawing. During the fourth and fifth years, the interest rate would, at CL&P's option, be (i) 1/8 of 1.00% above the Alternate Base Rate of Citibank, (ii) 3/4 of 1.00% above the Domestic Money Market Bid Rate, or (iii) at the Reference Rate. In the absence of certain required representations and warranties by CL&P, repayment would be made at the earliest of one year after the date of the drawing, the final maturity of the Bonds, or when the Bonds are remarketed, and interest would be at Citibank's Alternate Base Rate plus 1.00%.

CL&P will pay Citibank a one-time fee of .50% of the principal amount of the Bonds when the Letter of Credit issues and an annual commission of .75% of the amount available to be drawn thereunder. If all the bondholders would tender to the Remarketing Agent the $10 million of the Bonds and no remarketing could be effected for one year and CL&P could not (or elected not to) give the required representations and warranties, the cost to CL&P to draw under the Letter of Credit would be 12.863% based on Citibank's Alternate Base Rate of 11.00% plus 1.00%, a Letter of Credit Fee of .800%, and an Initial Placement Fee of .063%.

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 December 19, 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 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 application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31995 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6901; Rel. No. 23128]

The Connecticut Light and Power Co. and Western Massachusetts Electric Co.; Proposed Guarantee of Associate Companies' Liabilities Under Workers' Compensation Laws

November 22, 1983.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, each a public-utility subsidiary of Northeast Utilities ("NU"), a registered holding company, have filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

CL&P and WMECO propose to guarantee, jointly and severally, payment of any and all liability, claims, or obligations Northeast Utilities Service Company ("NUSCO") and/or Northeast Nuclear Energy Company ("NNECO"), both subsidiaries of NU, may have in connection with their self-insured workers' compensation programs under the workers' compensation laws of the State of Connecticut. NUSCO and NNECO provide support services to the companies in the NU system, of which CL&P and WMECO are the principal operating subsidiaries. CL&P and WMECO consider it appropriate to guarantee any liabilities of NNECO and NUSCO because substantially all of the activities of NNECO and NUSCO are undertaken to support the needs of CL&P and WMECO. As of December 31, 1982, NUSCO and NNECO employed

3,018 and 619 employees, respectively. It is stated that NUSCO's and NNECO's self-insured workers' compensation programs provide a substantial annual savings over the costs of purchsed workers' compensation insurance. In addition, CL&P and WMECO seek authorization to act, jointly and/or severally, as guarantors and/or sureties and/or to provide other indemnification on behalf of NNECO or NUSCO or any other affiliate of NU providing system support services which now operates or which in the future may seek to operate as a self-insurer of its liability under the workers' compensation laws of Connecticut, Massachusetts, or any other jurisdiction in which such company may have employees subject to workers' compensation laws. The authorization would be limited to guarantees, sureties, and/or indemnification of affiliates whose activities primarily support the public-utility businesses of CL&P and WMECO. The only situation which is currently contemplated is that described above.

The declaration and any amendments thereto are available for public inspection through the Commisson's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 19, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31992 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[812-5658; Rel. No. 13633]

Massachusetts Financial Development Fund, Inc., et al.; Filing of Application

November 22, 1983.

In the matter of Massachusetts Financial Development Fund, Inc., Massachusetts Financial Services Company, 200 Berkeley St., Boston, MA 02116, Sun Growth Fund, Inc., One Sun Life Executive Park, Wellesley Hills, MA 02181, and Sun Life Assurance Company of Canada, 200 University Avenue, Toronto, Ontario, Canada.

Notice is hereby given that Massachusetts Financial Development Fund, Inc. ("MFD"), Sun Growth Fund, Inc. ("Sun Growth") (MFD and Sun Growth together "Fund Applicants"), Massachusetts Financial Services Company ("MFS"), and Sun Life Assurance Company of Canada ("Sun Life of Canada") (the Fund Applicants, MFS and Sun Life of Canada collectively, "Applicants"), filed an application on September 27, 1983, requesting an order of the Commission pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder to permit the Fund Applicants to merge by means of the transaction proposed in the application, and pursuant to Section 17(b) of the Act exempting that transaction from the provisions of Section 17(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

The Fund Applicants propose first to transfer substantially all the assets of Sun Growth to MFD in exchange for shares of common stock of MFD, with the transfer to be made on the basis of the relative net asset value of the MFD shares and the value of the assets of Sun Growth to be transferred. They propose then to dissolve Sun Growth and distribute on a pro rata basis to the stockholders of Sun Growth all shares of MFD received by Sun Growth, all according to the terms of an Agreement in a plan of complete liquidation.

MFD and Sun Growth are both registered with the Commission under the Act as diversified, open-end, management investment companies. MFD is incorporated under the laws of Massachusetts and has as its primary investment objective long-term growth of capital and future income. Its secondary objective is to provide more current dividend income than is normally obtainable only from a portfolio of growth stocks. Its investment policy is to invest a substantial portion of its assets in the common stocks or securities convertible into common stocks of companies believed to possess better than average prospects for long-term growth. Sun Growth is incorporated under the laws of Delaware. Its primary investment objective is long-term growth of capital; its secondary objective growth of income. Its investment policy is to invest in equity securities of companies believed to have favorable long-term investments and does not engage in a pattern of trading for short-term trading profits.

Sun Life of Canada is a mutual life insurance company incorporated pursuant to an Act of Parliament of Canada in 1865. Sun Life of Canada is the sole stockholder of Sun Life Assurance Company of Canada (U.S.) ("Sun Life (U.S.)"), a Delaware stock life insurance corporation incorporated on January 12, 1970. As of June 30, 1983, Sun Life of Canada owned 100,000 shares of Sun Growth constituting 32% of the issued and outstanding shares.

MFS, a wholly-owned subsidiary of Sun Life (U.S.), is the investment adviser of the Fund Applicants and the principal underwriter of MFD. Suncan Equity Services Company ("Sunesco"), another wholly-owned subsidiary of Sun Life of Canada, is the principal underwriter of Sun Growth. According to the application the investment restrictions of the Fund Applicants are substantially similar and are generally compatible. MFD (but not Sun Growth) may lend its portfolio securities but does currently do so. The respective boards of directors of the Fund Applicants have no members in common. Certain officers of MFD also serve as officers of MFS and Sun Growth. In one instance an officer and director of Sun Growth is also a director of MFD. Certain of Sun Growth's officers also serve as officers of Sun Life of Canada and/or one or more of its wholly-owned subsidiaries.

Applicants state that the boards of directors of the Fund Applicants have approved the proposed Agreement and Plan of Reorganization ("Agreement"). MFD will acquire from Sun Growth in exchange for shares of MFD substantially all of the assets of Sun Growth on the closing date. The number of MFD shares to be issued in exchange for the assets of Sun Growth at the closing will be based upon the net asset value of MFD shares and the value of the assets of Sun Growth transferred. Those values will be computed by State Street Bank and Trust Company, custodian for both Fund Applicants, and certified by MFS, in its capacity as principal underwriter of MFD, and Sunesco. Those computations will be reviewed and approved by Sun Growth's auditors, Touche Roos & Co. The number of MFD shares to be issued will be determined by dividing the aggregate value of Sun Growth's assets transferred to MFD by the net asset value per share of MFD, determined as of the close of business on the last

business day preceding the closing date. Prior to or on the closing date, Sun Growth will distribute to its stockholders a dividend constituting substantially all of its undistributed net taxable investment income and any net taxable capital gains. At the closing MFD will assume the liabilities of Sun Growth but Sun Growth will insofar as is practicable discharge or have established adequate reserves for the discharge of all its known liabilities prior to the closing date. A cash reserve will be retained by Sun Growth for payment of expenses and liabilities after the closing date.

The terms of the proposed merger Agreement provide that each Fund Applicant is responsible for its own expenses incurred in connection with this transaction, except that MFD and Sun Growth will share equally the cost of printing the proxy materials in connection with the solicitation of proxies on behalf of Sun Growth. Sunesco and MFS have agreed to indemnify MFD from losses which MFD might incur in connection with the transaction as a result of its assumption of liabilities or Sun Growth's breach of warranty or misrepresentation. That indemnification is set out in a separate agreement. Sun Growth will not be contractually obligated to indemnify MFD.

The proposed Agreement includes and it subject to serveral conditions precedent to consummation of the proposed transactions: (a) receipt by Sun Growth of an opinion of its counsel regarding the existence of favorable tax treatment as set out in a proxy statement; (b) a vote of a majority of Sun Growth's stockholders approving of the proposal; (c) effectiveness of MFD's registration statement under the Securities Act of 1933; and (d) delivery at the closing date of certain officers' and auditors' certificates and legal opinions.

Applicants state that as soon as practicable after the closing, Sun Growth will be dissolved and will distribute to its stockholders of record as of the close of business on the closing date all of the MFD shares received by it at the closing by transferring to an account with MFD for each stockholder of Sun Growth that number of MFD shares to which each stockholder's proportionate ownership of shares of Sun Growth entitles him. All issued and outstanding shares will simultaneously be cancelled on the books of Sun Growth. Sun Growth will pay or make provisions for all of its debt and taxes, and any MFD shares subsequently received in exchange for any balance of the cash reserve retained by Sun Life will similarly be credited to the accounts of stockholders of Sun Growth.

Applicants state that since MFS is the investment adviser of the Fund Applicants, they might be deemed to be "affiliated persons" of each other within the meaning of Section 2(a)(3) of the Act. In that event, the proposed transaction might be deemed to be prohibited by Section 17(a). Rule 17a–8 under the Act would be available to the Applicants to exempt the proposed transaction from the provisions of Section 17(a) of the Act but for the fact that Sun Life of Canada is an "affiliated person" of Sun Growth based on its ownership of more than 30 percent of Sun Growth's outstanding shares (as of June 30, 1983). Also, based on its indirect ownership of MFS, Sun Life of Canada could be deemed to be an "affiliated person", of both Sun Growth and MFD. The Fund Applicants assert that the proposed transaction would otherwise meet the conditions of Rule 17a–8 because the directors of each Fund Applicant have made the requisite findings that (i) participation in the transaction is in the best interests of their fund and (ii) the interests of existing stockholders of the fund will not be diluted if the transaction is consummated.

Applicants state that the fundamental investment objectives of the Fund Applicants are substantially similar, and that it is not anticipated that any sales of portfolio securities will be necessary as a result of the proposed transaction. Applicants further state that they anticipate achieving certain economies of scale as a result of the proposed transaction. Specifically, Applicants expect the operating expenses to decrease where there would otherwise be a duplication of services, such as accounting services, legal and audit fees, directors' fees and costs of reports to stockholders. In addition, the increased asset base should diminish the impact of redemptions on the management of the portfolio. Applicants assert that the proposed merger will provide Sun Growth sotckholders with greater flexibility in selecting a broad range of investments in light of each stockholder's particular investment goals. The ability to transfer among twelve of the fourteen Funds in the MFS complex of mutual funds would be available to sotckholders for a nominal fee of $5.00 per exchange.

Notice if further given that any interested person wishing to request a hearing on the application may, not later than December 13, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31990 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[70–6922; Rel. No. 23132]

Middle South Services, Inc., and Middle South Utilities, Inc.; Proposal by Holding Company to Guarantee Subsidiary Service Company's Performance Under Computer Leasing Agreement

November 23, 1983.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana, a registered holding company, and Middle South Services, Inc. ("Services"), a subsidiary service company of Middle South, have filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By orders dated December 21, 1982 (HCAR No. 22793) and January 19, 1983 (HCAR No. 22822), Middle South was authorized to guarantee the performance by Services of obligations under computer equipment leasing arrangements between Services and Comdisco, Inc. ("Comdisco"), a non-affiliated corporation. It was indicated in those orders that Services contemplated altering its leasing arrangements to include additional model upgrading for computer systems currently under lease.

Services proposes to enter into an amended leasing arrangement with Comdisco, and Middle South seeks authorization to guarantee the performance by Services, without recourse to Services first being required, of its obligations under the revised leasing arrangements which would now include additional model upgrading.

Comdisco would purchase the additional model upgrading at a purchase price of approximately $3,833,506 and, concurrently therewith, lease the model upgrading to Services under leasing arrangements commencing with installation of the model upgrading and coterminous with the lease of Services' computer system. Monthly rental payments by Services will be approximately $119,187 beginning on May 1, 1984 and Services will guarantee a 10% residual value in respect of the model upgrading.

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 December 16, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31996 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6904; Rel. No. 23129]

Monongahela Power Co. et al.; Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealer; Request for Exception From Competitive Bidding

November 22, 1983.

In the matter of Monongahela Power Company, 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company, Darnsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601.

Monongahela Power Company ("Monogahela"), The Potomac Edison Company ("Potomac"), and West Penn Power Company ("West Penn") (collectively, the "Companies"), wholly-owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application and amendments thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) under the Act.

The Companies propose to issue short-term notes from time to time to banks and to a dealer in commercial paper, during the period January 1, 1984, through June 30, 1985, in aggregate principal amounts not to exceed $64 million, $35 million, and $110 million outstanding at any one time for Monogahela, Potomac, and West Penn, respectively. These amounts include any short-term debt still outstanding under this Commission's prior authorization (HCAR No. 22545).

Each note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater than the then current prime or equivalent interest rate of the bank at which the borrowing is made. The notes may or may not have prepayment provisions.

The Companies have agreed to pay for lines of credit with a group of banks by maintaining compensating balances (no greater than 5% of all or a portion of the line of credit) and/or by paying an annual cash fee (no greater than ⅜% of all or the balance of the line of credit). Such compensating cash balances are maintained in many cases for the purpose of meeting regular operating requirements. If such balances were maintained solely to fulfill compensating balance requirements, the effective cost of bank borrowing under such lines of credit would be no more than 11.579% based on a prime commercial credit rate of 11%.

The commercial paper notes will not be prepayable and will have varying maturities, none more than 270 days. The notes will be sold directly to the dealer at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. The dealer may reoffer the commercial paper to not more than 200 of its customers, at a discount rate of ⅛% per annum less than the discount rate to the Companies.

An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance of commercial paper notes on the grounds that (1) it is impractical to invite competitive bids for commercial paper and (2) current rates are published daily. The proceeds from the borrowings will be used for general corporate purposes including business operations, construction, and property acquisitions.

The application 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 December 19, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing and will receive a copy of any notice or order issued. After said date, the application, as then amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-31993 Filed 11-29-83; 8:45 am]

BILLING CODE 8010-01-M

[70-6932; Rel. No. 23126]

System Fuels, Inc., et al.; Proposal by Fuel Procurement Subsidiary To Make Borrowings From Its Public-Utility Parent Companies for Its Fuel Supply Programs

November 22, 1983.

In the matter of System Fuels, Inc., Noro Plaza, 666 Poydras, New Orleans, Louisiana 70130, Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205, New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

System Fuels, Inc. ("SFI"), a fuel procurement subsidiary of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") (collectively the "Operating Companies"), each a subsidiary of Middle South Utilities, Inc., a registered holding company, and the Operating Companies have filed an application-declaration with this Commission

pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 90, and 91 promulgated thereunder.

SFI intends to enter into a new loan agreement with the Operating Companies providing for borrowings in 1984 not to exceed $125 million from the Operating Companies to be used to finance, in part, transactions entered into by SFI in the ordinary course of its fuel supply business during the period January 1, 1984, through December 31, 1984. In accordance therewith, SFI proposes to issue during 1984 to the Operating Companies its notes maturing on December 31, 2009, in an aggregate amount not to exceed, at any one time, the sum of $125 million. Such borrowings would be in addition to the $13 million of outstanding borrowings authorized in File Nos. 70–5415 and 70–5941 and $102 million of borrowings estimated to be outstanding under the current loan agreement with the Operating Companies at December 31, 1983, as authorized in File No. 70–6097. The commitment of each Operating Company is as follows: AP&L—$40 million, LP&L—$55 million, MP&L—$18.75 million, and NOPSI—$11.25 million. Each Operating Company's commitment is equal to the same proportion of the total commitments as its kilowatt-hour sales for the twelve months ended September 30, 1983, bear to the total kilowatt-hour sales of the Operating Companies for that period. Each note will bear interest on the unpaid principal balance thereof, adjustable monthly on the first day of each month, at an annual rate for such month equal to the annual rate of interest borne on the 1st day of the preceding month by the short-term bank borrowings of the Operating Company to which such note shall have been issued. If such Operating Company shall not have any short-term bank borrowings outstanding, the prime commercial rate shall apply. The notes will be prepayable at any time in any amount without premium or penalty. Each prepayment on account of the unpaid principal balance of the notes will be made by SFI to the Operating Companies pro rata in accordance with their respective percentage shares of the commitments. The rights and obligations of the parties under the loan agreement will be subject to certain restrictions relating principally to the payment or prepayment by SFI of its indebtedness to the Operating Companies during the terms of certain other agreements.

SFI also requests that the following authorization be extended during 1984 for the following: (1) The Operating Companies, in connection with a transaction or transactions in the ordinary course of SFI's fuel supply business and not involving the issuance of a security, to assure any party contracting with SFI that the Operating Companies will, in accordance with their respective shares of ownership of the common stock of SFI, take such action as may be appropriate from time to time to keep SFI in a sound financial condition so that it may discharge its obligations under the particular contract or contracts; and (2) To have personnel employed by the other companies in the system perform services to SFI at cost where it is more economical and efficient for such personnel to perform such services.

It is requested that the companies be authorized to file certificates under Rule 24 with respect to the proposed transactions on a quarterly basis.

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 December 19, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in 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 application-declaration, as filed or as it many be 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. 83–31091 Filed 11–29–83; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/689]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Fire Protection; Meeting

The Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on December 13, 1983 at 9:30 A.M. in Room 1303 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of this meeting will be to discuss plans for the 29th meeting of the International Maritime Organization's Subcommittee on Fire Protection, to be held in London, February 6–10, 1984.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Donald J. Kerlin, U.S. Coast Guard Headquarters (G–MTH–4/13), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426–2197.

Dated: November 16, 1983.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 83–32061 Filed 11–29–83; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/690]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 16, 1983 at 9:30 a.m. in Room 1408 of the Department of State, 2201 C Street, NW., Washington, D.C.

The meeting of Study Group C will concentrate entirely on optical fibers.

Members of the general public may attend the meeing and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. it is suggested that prior to the meeting, all persons planning to attend the meeting should contact Mr. Dexter Anderson, Department of State, Washington, D.C. 20250, telephone 202 632–6583. All attendees must use the C Street entrance ot the building. Entrance will be facilitated 15 minutes before and after the meeting begins.

Dated: November 15, 1983.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 83–32062 Filed 11–29–83 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM-8/691]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 19, 1983 at 9:30 a.m. in Room 1406 of the Department of State, 2201 C Street, N.W., Washington, D.C.

The meeting of Study Group C will concentrate entirely on visual telephony.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to the meeting, all persons planning to attend the meeting should contact Mr. Dexter Anderson, Department of State, Washington, D.C. 20250, telephone 202 632-6583. All attendees must use the C Street entrance to the building. Entrance will be facilitated 15 minutes before and after the meeting begins.

Dated: November 15, 1983.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 83-32063 Filed 11-29-83; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Logan and Union Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Logan and Union Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Steele, Acting Division Administrator, or Mr. Lawrence J. Kastner, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215. Telephone: (614) 469-5636 or 469-7443.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Ohio Department of Transportation (ODOT), will prepare an environmental impact statement on the proposed construction of approximately 17 miles of four-lane, divided, limited access highway on new location, with interchanges at selected crossroads, in Logan and Union Counties, Ohio. The proposed facility is a relocation of US Route 33 and would extend from a point on the existing two-lane route near Zanesfield, Ohio, to an interchange with the Marysville by-pass. From Marysville to Columbus, US Route 33 is already completed as a freeway-type facility.

Studies for the improvement of US Route 33 have been carried on since 1966. These studies considered several alternatives and gave serious attention to widening the existing facility. However, it was decided that the latter alternative was not a prudent solution given the existing and likely future development of the area.

Currently, four alternative alignments are being considered. Two pass to the north and two to the south of an area containing the Transportation Research Center, a large automobile plant, and a motorcycle plant. The remainder of the project area is now primarily rural. The no-build alternative is also being considered. A preferred alternative will be identified in the draft environmental impact statement; however, the final selection of an alternative will be made after the draft EIS has been circulated and a public hearing held.

The proposed highway facility would assist the existing and anticipated industrial activity in the area and aid planned development. It would also contribute to the fulfillment of state and local transportation plans, meet expected traffic demands, and relieve congestion on the existing route, allowing it to better serve local needs.

A program of public involvement and coordination with Federal, State and local agencies has been initiated. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project and, therefore, it is not anticipated that a formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted program and projects apply to this program)

Issued on: November 22, 1983.

James J. Steele,

Acting Division Administrator, Columbus, Ohio.

[FR Doc. 83-32005 Filed 11-29-83; 8:45 am]

BILLING CODE 4910-22-M

[Docket No. 82-41T]

Bridges Owned by the Burlington County Bridge Commission; Order of the Administrator

Background

On March 1, 1982, the Burlington County Bridge Commission (BCBC) began collecting an increased toll of 25 cents for automobiles for passage across the Tacony-Palmyra and Burlington-Bristol Bridges. The prior toll rate for automobiles had been 10 cents. The new maximum toll rate for trucks was $1.50, which was 50 cents more than the old maximum of $1.00. Proportional increases were imposed on other classes of users.

One complaint was subsequently filed by Michael Kaplan with the Federal Highway Administration, challenging the revised toll rates. The Administrator, on May 12, 1982, then ordered the appointment of an Investigation Team to conduct a bridge toll investigation in accordance with the requirements of 49 CFR 310.5. After meeting with the complainant and representatives of the BCBC, their written comments and responses, and pertinent financial documents, the Investigation Team issued a final investigation Report on July 20, 1983. A copy was served on all parties. The Report recommended that no formal hearing be held because there are no material factual issues in dispute. The Report also concluded that the toll rate increase was reasonable and just.

Are Issues Factual, Material, and Disputed?

The following five factual issues were identified by the complainant and will be addressed below:

1. *Does the BCBC operate the Rancocas Creek Bridge at Centerton?* There is no evidence that it does. The record shows that the BCBC operates and maintains the Tacony-Palmyra, Burlington-Bristol, and Riverside-Delanco Bridges, as well as various approach roads.

2. *Does the line item for the Delanco-Riverside Bridge shown on the Anticipated Revenues and Expenses Statement include the cost of the bridge operation alone or is it combined with*

expenses for River Road improvements? The line item includes the cost of bridge maintenance alone. The cost of River Road improvements is shown on the Estimated Costs of Major Repairs to Facilities Statement.

3. *What is the nature of the expense of Payments to Municipalities listed on the Anticipated Revenues and Expenses Statement?* It is a payment in lieu of, or in reimbursement for, the loss of property taxes on BCBC property.

4. *Under what line item for expenses is the cost of providing the Palmyra Travel Bureau listed?* A substantial portion of the costs come under the costs allocated for salaries ($33,775 in 1981). The insignificant remainder ($754 in 1981) appears to be included in the line item "other" on the Anticipated Revenues and Expenses statement.

5. *Is it necessary to replace and computerize the toll collection equipment at a cost of $720,000?* Neither FHWA nor the complainant can substitute their judgment for the judgment of the BCBC, whose members are appointed by the Board of Chosen Freeholders. This is a matter within the discretion of the BCBC. As indicated in other proceedings, the Administrator will not get involved in the internal workings of a bridge commission and second guess them on the validity of any of their projects, especially where there is no indication that the BCBC acted unreasonably or arbitrarily.

No Formal Hearing Is Necessary

The above review of the identified factual issues indicates that many of the issues are collateral to and/or beyond the scope of the Administrator's authority in this proceeding. As a result, those few facts in dispute are not material to the ultimate decision of whether tolls are reasonable and just. Where there are material factual issues in dispute, there are sufficient grounds for the Administrator to call this matter for a hearing before an administrative law judge, but the question as to whether the toll rates are reasonable and just is the ultimate decision of the Administrator, based on the material facts.

None of the above five factual issues are both disputed and material (to the determination as to whether the tolls are reasonable and just). For the reasons stated above, the Administrator finds that there are no material factual issues outstanding which would necessitate a full administrative hearing.

Are Tolls Reasonable and Just?

There was a legal issue raised by the complainant as to whether, under Federal law, toll revenues may be diverted to pay for maintenance and improvements to non-toll facilities, i.e., the Riverside-Delanco Bridge and River Road. The BCBC argued that those non-toll facilities are approaches under the pertinent Federal statutes and therefore may be funded by toll revenues, and in addition, the expenditures are comparatively insignificant.

The financial documents indicate that the maintenance and operational expenses for the Riverside-Delanco Bridge and River Road were about 0.43% of total expenses ($26,205 out of a total of $6,088,391) in 1982. The Investigation Report, based on the undisputed financial documentation, indicated that the BCBC has had, and faced, severe projected losses without a toll increase, and would be unable to reduce their reserve fund deficit. Without the toll increase the bridges would probably deteriorate because no funds would be available for major repairs.

Even if the expenses for the Riverside-Delanco Bridge and River Road were not considered, the toll increase would still have been necessary. Though the expenditures for the maintenance and operation of substantial portions of those non-toll facilities appear to be unauthorized, the insignificant amount involved would not effect the decision as to whether the tolls are reasonable and just. Therefore, the "approach" issue need not be considered at this time, as its resolution would have no impact on the Administrator's final decision.

Conclusion

Upon consideration of the record in this matter, the recommendation of the Investigation Team, and pursuant to the provisions of 49 CFR Part 310, it is hereby Ordered that:

1. There are insufficient grounds to initiate formal adjudication concerning the reasonableness and justness of the toll schedule. There is no evidence that the March 1, 1982, revised toll rates for the Tacony-Palmyra and Burlington-Bristol Bridges are not reasonable, just, and proper under 33 U.S.C. 494.

2. This proceeding is dismissed.

Within 20 days after the date of this Order, any party may petition the Administrator for reconsideration of this Order, and after due consideration of such petition(s), the Administrator will take appropriate action.

Issued this 17th day of November, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 83-32016 Filed 11-29-83; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Maritime Advisory Committee—Working Group on Ship Costs; Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Advisory Committee's Working Group on Ship Costs will meet Thursday, December 15, 1983, at 8:30 a.m. The meeting will be held in DOT's Nassif Building, 400 Seventh Street, SW., Washington, D.C., Room 7200. The agenda includes the development of recommendations relating to vessel capital costs, shipboard operating costs, auxiliary equipment costs and corporate management costs to assist in making the U.S.-maritime industry more competitive in worldwide marine transportation. The meeting will be open to the public on a space-available basis.

By order of the Maritime Administrator.

Dated: November 25, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-32050 Filed 11-29-83; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Public Proceeding Regarding Defect Investigation; Fenton Wheels

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966 as amended (Pub. L. 93-492, 88 Stat. 1470; October 2, 1974), 15 U.S.C. 1412 (the Act), the Acting Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA), has made an initial determination that a safety-related defect exists in approximately 650,000 cast aluminum wheels manufactured between 1969 and 1981. The suspect wheels were marketed under the model names "Gyro" (or slotted aluminum), "RT", and "RT Championship." NHTSA's investigation revealed reports of 14 serious injury accidents, including 3 fatalities. NHTSA's investigation indicates that the wheels may fail while the vehicle is being driven, causing loss of vehicle control. The wheels may also explode while the tire is being inflated, exposing those nearby to the risk of being struck by fragments of the wheel. Other than stopping use of the wheel, NHTSA knows of no safety precautions to observe to ensure freedom from failure on the highway. Persons are urged to employ safety cages when

mounting wheels or adding air to a tire on these wheels.

NHTSA will hold a public proceeding pursuant to section 152 of the Act at 10:00 a.m. on January 17, 1984, in Room 2230 of the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, D.C. 20590, at which time Fenton Manufacturing Company will be afforded an opportunity to present data, views and arguments regarding the initial determination of defect.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Joyce Tannahill, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5326, Washington, D.C. 20590 (telephone (202) 426–2850) before close of business on January 3, 1984.

The agency's investigative file in this matter is available for public inspection during regular working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on November 25, 1983.

George L. Parker,

Acting Associate Administrator for Enforcement.

[FR Doc. 83-32040 Filed 11-25-83; 4:35 pm]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 231
Wednesday, November 30, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, December 1, 1983

November 23, 1983.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 1, 1983, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—*Title:* Report and Order *re* Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons, CC Docket No. 83-427—Issuance of Final Rules and Regulations. *Summary* The Commission will adopt rules and regulations to implement the Telecommunications for the Disabled Act of 1982 (47 U.S.C. 610).

Common Carrier—2—*Title:* Consolidated Application of American Telephone and Telegraph Co. and Specified Bell System Companies for Authorization under Sections 214 and 310(d) of the Communications Act for various transfers of facilities. (W-P-C-4955) *Summary:* The Commission will consider whether to grant the above-referenced application, which requests various authorizations necessary to implement the divestiture of the Bell Operating Companies required by the Modified Final Judgment in *United States v. AT&T*, 522 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 103 S. Ct. 1240 (1983).

Common Carrier—3—*Title:* Petition of the State of Michigan concerning the Effects of Certain Federal Decisions on Local Telephone Service, CC Docket No. 83-788. *Summary:* The Commission issued a *Notice of Inquiry* in response to a petition by the State of Michigan and the Michigan Public Service Commission. Michigan asked the Commission to review the cumulative effects of several federal decisions on local telephone rates. The Commission will consider the findings of a report based on information submitted in response to that *Notice*.

Common Carrier—3—*Title:* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board. *Summary:* The Commission will consider the Joint Board's recommendations proposing changes in jurisdictional separations procedures.

Common Carrier—3—*Title:* Reconsideration in Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145. *Summary:* The FCC will consider the Emergency Petition filed by American Telephone and Telegraph Company for reconsideration of the October 19, 1983 Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC 83-470. In the October 19, 1983 order the FCC found that the costs and burdens of delay are outweighed by the need for careful initial review of the access and divestiture-related tariffs, suspended the effectiveness of those tariffs until April 3, 1983 and initiated an investigation into their lawfulness. AT&T seeks reconsideration of the suspension order, arguing that the cost of the delay outweigh the benefits, and urges the FCC to consider whether partial suspensions of the tariffs would meet the concerns expressed in the October 19 order and still permit same form of access tariffs to take effect at divestiture, January 1, 1984.

Audio—1—*Title:* Application (BAP/811228EA) for voluntary assignment of the construction permit for unbuilt station KVGO(AM), Pineville, Louisiana, from Blac, Inc. to EBCO Broadcasting, Inc., and related request for exceptions to the multiple ownership rules, based on Note 8 and 11 to § 73.35 (a) and (b). *Summary:* The Commission will consider the formation of a UHF-TV/AM broadcast station combination in Pineville/Alexandria, Louisiana, under the "one-to-a-market" provision of the multiple ownership rules; the formation of a UHF-TV and two AM combination within 100 miles of each other under the "regional concentration of control" provision of the multiple ownership rule; and the effect of the minority ownership policy on the formation of these combinations.

Video—1—*Title:* Response to Notice of Apparent Liability by Sonic Cable TV. *Summary:* Sonic seeks rescission of the forfeiture assessed against it for violation of §§ 76.605(a)(12) and 76.613(b) of the Commission's Rules.

Policy—1—*Title:* Amendment of Parts 2 and 73 of the Commission's AM Broadcast Rules Concerning Use of the AM Carrier. *Summary:* The Commission will consider a recommendation by the Mass Media Bureau concerning use of the AM carrier signal, 47 CFR §§ 2.106(NG128), 2.1001(h), 73.127, 73.1690(e)(6).

Policy—2—*Title:* Adoption of a ±3° phase tolerance for directional AM stations, expansion of the use of toroidal current transformers as a means of deriving current samples in direction AM station antenna systems and provision for the use of radio frequency relays in sampling element transmission lines. *Summary:* The Commission will consider adoption of a *Report and Order* that addresses the above-mentioned matters at issue in BC Docket No. 78-28 and MM Docket No. 83-16.

Policy—3—*Title:* Report and Order revising Section 73.3550 of the Commission's Rules. *Summary:* The Commission will consider its policies and procedures with respect to the assignment of call letters to broadcast stations.

Enforcement—1—*Title:* License Renewal Applications of Certain Broadcast Stations Serving Communities in the States of Indiana, Kentucky, and Tennessee. *Summary:* The Commission considers a petition to deny filed by the National Black Media Coalition and other against the license renewal applications for 16 broadcast stations located in Indiana, Kentucky and Tennessee. The petition contains EEO and programming allegations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Perationa, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: November 23, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1067-83 Filed 11-28-83; 10:27 am]

BILLING CODE 6712-01-M

2

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 52801, November 22, 1983.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202/377-6970).

CHANGES IN THE MEETING: The time of the meeting scheduled for November 28, 1983, has been changed from 10 a.m. to 3 p.m.

[No. 65, November 25, 1983]

[S-1666-83 Filed 11-28-83; 10:30 am]

BILLING CODE 6720-01-M

3

NATIONAL COUNCIL ON THE HANDICAPPED

TIMES AND DATES:

9 a.m.–5 p.m., Monday, December 12; 1983;

9 a.m.–5 p.m., Tuesday, December 13; 1983;

9 a.m.–12 p.m., Wednesday, December 14, 1983.

PLACE: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

General Business
Review and Recommend Directions for FY 84—Program Review Reports
Committee Meetings
Research and Services

Note: Any person requiring an interpreter of other special services, please contact NCH Staff immediately.

CONTACT FOR MORE INFORMATION: Dr. Harvey C. Hirschi, Executive Director, National Council on the Handicapped, Phone: (202) 245–3498.

[S-1668-83 Filed 11-28-83; 3:39 pm]

BILLING CODE 4000-01-M

4

NUCLEAR REGULATORY COMMISSION

DATES: Week of November 28, 1983 (Revised) and week of December 5, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Monday, November 28:*

10:00 a.m.
Presentation and Discussion Regarding Treatment of Management Issues in TMI–1 Restart Proceeding (Public Meeting) (As Announced)

Tuesday, November 29:

10:00 a.m.
Status Report on Regionalization (Public Meeting) (As Announced)

Wednesday, November 30:

10:00 a.m.
Discussion of NRC Regulatory Policy for Advanced Reactors (Public Meeting) (Date Change)

2:00 p.m.
Briefing by Executive Branch (Closed—Exemption 1) (Date Change)

Thursday, December 1:

10:30 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6) (Date Change)

2:00 p.m.
Discussion by Industry on Insider Rule (Public Meeting) (As Announced)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting):
a. NRC Response to Court Decision Vacating Interim Rule on Environmental Qualification Deadline (*Postponed*)

Friday, December 2:

10:00 a.m.
Discussion of Policy and Planning Guidance (Public Meeting) (Replaced Briefing/Possible Vote on TMI Steam Generators and Discussion of Corrosion in PORVs at TMI–1) (Date Change)

Monday, December 5:

9:30 a.m.
Presentation by Parties on GPU Proposal (Public Meeting)

2:00 p.m.
Discussion of NRC Enforcement Policy (Public Meeting)

Tuesday, December 6:

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6)

Wednesday, December 7:

1:30 p.m.
Briefing/Possible Vote on TMI Steam Generators (Open/Closed—Exemption 10)

Thursday, December 8:

9:30 a.m.
Discussion of Staff Decision on Zimmer Course of Action (Public Meeting)

Additional Information: Affirmation of Fitness for Duty scheduled for November 23 was *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

November 28, 1983.

Walter Magee,

Office of the Secretary.

[S-1669-83 Filed 11-28-83; 3:48 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
November 30, 1983

Part II

Department of Health and Human Services

Food and Drug Administration

Laser Products; Amendments to Performance Standard; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1000 and 1040

[Docket No. 80N-0364]

Laser Products; Proposed Amendments to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the performance standard for laser products to extend the applicable wavelength range, to require minimal reporting and recordkeeping for sales of original equipment manufacturer (OEM) components, to simplify and clarify the definitions for "human access," "protective housing," and "product classification," and to add a new definition for a "Class IIIa laser product." To eliminate unnecessarily restrictive requirements, FDA is proposing to modify the performance requirements for a safety interlock, viewing optic, remote control connector, emission indicator delay, key control, beam attenuator, and certain radiation measurement parameters. Additionally, FDA is proposing changes to clarify the need for scanning failure safeguards, manual reset mechanisms, and emission indicators on certain laser products. The agency also is proposing various minor clarifying changes. Experience gained by FDA in administering the laser standards has shown the need for proposing these changes.

DATES: Comments by January 30, 1984. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**; except that FDA is proposing that the following proposed requirements be effective 1 year after the date of its publication in the **Federal Register**: Section 1040.10(a)(2)(i) and (3) regarding OEM component sales; (b)(19) regarding the applicable wavelength range of a "laser"; (f)(5)(iii) regarding the laser radiation emission indicator; and (f)(10) regarding the manual reset mechanism.

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: Glenn E. Conklin, National Center for Devices and Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: The performance standard for laser products (21 CFR Part 1040) became effective on August 2, 1976. In the **Federal Register** of November 28, 1978 (43 FR 55387), FDA amended the standard to clarify several provisions. These changes solved major problems that originally existed in the standard. FDA now has gained further experience in administering the laser standard and believes that further amendments are appropriate. In the **Federal Register** of November 7, 1980 (45 FR 74374), FDA published a notice of intent (NOI) to propose additional amendments to the standard. On November 18, 1980, FDA mailed copies of the NOI and draft proposed amendments to the general public for comment. Subsequently, the draft amendments were discussed publicly at the December 3 through 4, 1980 meeting of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), a statutory committee that FDA is required to consult before it may prescribe any electronic product performance standard under the Radiation Control for Health and Safety Act of 1968 (Pub. L 90-602, 42 U.S.C. 263b et seq.).

FDA received 18 comment letters and 2 supplements that included about 200 individual comments on the notice and draft amendments. The responses came from 10 laser product manufacturers, 2 Federal governmental agencies, and 1 each from an academic institute, a technical consultant, a trade association, a laser product user, a voluntary standards association, and a manufacturer of a scanning device used with laser products. A status report on the draft proposed amendments was presented at the TEPRSSC meeting on December 10, 1981. In respose to the many comments, FDA has revised the draft proposed amendments to the standard. FDA believes that the amendments proposed herein would clarify and simplify the laser performance standard without affecting the hazard classification scheme, would reduce significantly the regulatory burden on affected manufacturers without compromising the public health, and generally would improve the effectiveness of FDA's regulation of the laser industry. However, comments and supporting data concerning the proposed amendments would be particularly helpful to the agency during its preparation of any final rule based on this proposal.

Sales of (OEM) components. The standard currently does not apply to a laser product sold to, by, or for a manufacturer for use as an OEM component or replacement in a complete electronic product. FDA believes that some of these laser products are being sold illegally to end users. Monitoring control over sales of OEM components would have been provided for the agency in the draft amendments by imposing requirements on the manufacturers of OEM components for reporting, recordkeeping, and labeling. Comments argued, however, that the requirements in the draft amendments would be unnecessarily restrictive and would impose a great economic impact on the OEM manufacturer with little or no safety benefit accruing to the public.

The agency continues to believe that to assure the protection of the public health, there should be accountability of sales of OEM components to allow FDA to identify and trace these products. In light of these comments, FDA is proposing less burdensome controls. Now FDA is proposing to revise § 1040.10(a) (21 CFR 1040.10(a)) to require that, as a condition for exclusion from the laser standard, the OEM component manufacturer register and maintain a current registration as an OEM manufacturer. Registration would include the manufacturer's name and address, as well as a listing of OEM components manufactured that includes the product name, type, model number, and laser medium or emitted wavelength(s). If its registration data becomes obsolete for any reason, the manufacturer would be required to update its registration data submitted to FDA. In accordance with § 1002.31 (21 CFR 1002.31), the OEM manufacturer also would be required to maintain and allow FDA to review any sales, shipping, or distribution records that identify the names and addresses of the purchasers, the type and number of OEM units sold, and the date of sale or shipment. In addition, the agency proposes to revise the current requirement in §1040.10(a)(2)(i) that an OEM manufacturer provide adequate instructions for component installation. Instead, FDA is proposing to revise §1040.10(a)(2)(i) to require only that the OEM Manufacturer provide a general warning notice that states that adequate instructions for the safe installation of the component laser product are provided in servicing information available from the complete laser product manufacturer. The agency believes that adequate labeling requirements already exist in the standard.

Applicable wavelength range. Currently, the standard applies to laser

products that emit radiation within the wavelength range of 250 nanometers (nm) to 13,000 nm. As discussed in paragraph 2 of the NOI, certain laser products emit radiation outside the present applicable wavelength range of the standard. In the draft amendments, FDA proposed to extend the applicable wavelength range of the standard to include radiation within 180 nm and 10^6 nm (1 millimeter) to include such laser products in this standard. Comments on the draft amendments supported FDA's adoption of the proposed applicable wavelength range. Therefore, FDA proposes to amend the definition of "laser" in § 1040.10(b)(15) (renumbered as § 1040.10(b)(19) in this proposal) by extending the applicable wavelength range to between 180 nm and 10^6 nm.

Human access. The definition of human access is critical in determining the class of a laser product and in evaluating its labeling and certain performance requirements, such as a protective housing or a safety interlock. Currently, the definition of "human access" (§ 1040.10(b)(12)) includes reference to a straight unobstructed path of up to 100 centimeters (cm) from any part of the human body to provide a sufficient safety margin to allow for the possible insertion into a laser product of tools or other foreign objects that could allow human access to specularly reflected laser radiation. Laser product manufacturers have argued that this reference to a straight unobstructed path is arbitrary and difficult to interpret. In evaluating the hazard that may be presented by a laser product, the current definition of "human access" does not allow consideration of the size of the opening in a protective housing. Further, the need to consider access "from any part of the human body" has resulted in safe product configurations being considered technically noncompliant with the standard. In the draft amendments, FDA proposed to remove the reference to a 100 cm straight unobstructed path from any part of the human body. Instead, FDA proposed that a straight "test object" of unlimited length with some cross-sectional dimension equal to or greater than 1 millimeter (mm) be used to test the allowable size of any opening in a protective housing. The comments criticized the test probe concept, stating that it would be confusing. The comments also argued that use of such a test probe would be unrealistic and make the proposed requirements unnecessarily more restrictive than the requirements in the present standard. For these reasons, the agency has decided not to propose use of the test probe. Instead, FDA proposes to define "human access" (renumbered in the proposal as § 1040.10(b)(15)) as the capacity of any part of the human body to intercept laser or collateral radiation. In the case of laser products that contain proposed Class IIIb or Class IV levels of laser radiation, "human access" also will mean the capacity of any part of the human body to intercept laser radiation reflected by any single introduced flat surface from the interior of the product through any opening in the product.

Protective housing. From reviewing initial reports and inspecting laser products, FDA has found that it is difficult for some manufacturers of laser products to interpret the present requirements in § 1040.10(f)(1) for a protective housing. Consequently, it is difficult for these manufacturers to design a protective housing that complies with the standard. The agency believes that the present requirements for a protective housing are stated in an excessively long and cumbersome manner. To correct this, the agency proposed simplified wording in the draft amendments to clarify the protective housing requirement and to dispel certain misinterpretations. Public reaction to these changes was favorable. Therefore, FDA is proposing to revise § 1040.10(f)(1) to convey clearly a fundamental principle of the laser standard: protective housing is required to prevent human access to a level of laser and collateral radiation that exceeds the radiation limits specified for Class I laser products when human access is not necessary for the laser product to perform its intended function. When human access to a level of laser radiation that exceeds the limits of Class I is necessary, the level of radiation will not, under the proposal, exceed the limits of the lowest class necessary for the product to perform its intended function(s).

Classification. FDA recognizes that classification of a laser product is complex. The regulated industry has often misunderstood the present standard, resulting in misclassification of some laser products. In the draft amendments, the agency suggested certain changes to the standard in an effort to simplify and clarify the classification requirements without changing significantly the concept. The agency proposed that the definition for each product class include the biological hazard associated with the class. Class definitions in the draft were provided references to tables identifying the accesible emission limit associated with each class. New definitions for "invisible radiation" and "visible radiation" were proposed in the draft, and the current accessible emission limit tables were revised to provide a separate column for the level, unit, and the parameter of each of the accessible emission limits listed, and to make other clarifications. Comments on the draft amendments noted that the suggested changes helped to clarify the classification process but argued that the class definitions in the draft were cryptic, terse, and subject to misinterpretation, and that there were disparities in the bioeffect hazards assigned to each product class. Two comments recommended that the draft biological hazard descriptions be reworded or deleted from the definitions, arguing that they are misleading, inappropriate, and subjective.

FDA believes that it is appropriate to associate descriptions of the biological hazards with the class definitions when such descriptions are accurate and consistent with the warning labels that are required for the class. In response to comments on the draft amendments, FDA is proposing revised class definitions. FDA is proposing that the description of the biological hazard associated with a class be stated as a footnote for each class definition. Therefore, the proposed class defintions are stated in § 1040.10(b) (5) through (11), and footnotes 1 through 6 provide descriptions of the biological hazard associated with each class. In addition, FDA is proposing two new definitions: "invisible radiation" (§ 1040.10(b)(17)) and "visible radiation" (§ 1040.10(b)(40)). The agency also proposes to expand the definition of Class IIIa in §1040.10(b)(8) to include all laser products that emit only visible radiation between 1 milliwatt (mW) and 5 mW without regard to irradiance, but with labeling requirements that would be dependent on the irradiance. This will allow easy implementation of the proposed amendments without degrading hazard warnings or performance requirements.

As suggested by a comment, the agency is proposing to revise each of the accessible emission limit table headings to correspond with the class of the laser radiation associated with the table. Also, consistent with the draft amendments, certain column headings in the accessible emission limit tables have been changed to "value," "unit," and "quantity," respectively. FDA proposes to revise Table IV and Table V to include the k_1 and k_2 wavelength-dependent correction factors for the expanded wavelength range that FDA proposes be included in the laser

standard. The agency believes that there is no biological reason to change the values for k_1 and k_2 from a value of 1.0 for the wavelengths in the proposed expanded wavelength range.

FDA proposes to amend Table I in § 1040.10(d) to use the quantity of radiant exposure to express the accessible emission limits for Class I laser radiation in the wavelength range from 2,500 nm to 1.0 X 10^6 nm. FDA also is proposing changes in Table I because of an aperture change for wavelengths between 100 micrometer and 1 millimeter in the "Standard for the Safe Use of Lasers" recommended by the American National Standards Institute (ANSI–Z 136.1–1980). Because the values for k_1 and k_2 are 1.0 for this wavelength range in FDA's proposed amendments to the laser standard, the accessible emission limits formerly provided in the standard would have been below the ANSI maximum permissible exposure levels by a factor of 121. Therefore, FDA is proposing changes in Table I to establish accessible emission limits in FDA's standard that are consistent with the maximum permissible exposure for skin contained in the ANSI standard. FDA believes that its proposed use of quantities of radiant exposure to express the accessible emission limits for this range of wavelengths is appropriate for the biological hazard associated with the wavelength range (i.e., small area heating of the skin and cornea).

Safety interlocks. Based on experience gained while enforcing the laser performance standard, the agency believes that the present requirements regarding a safety interlock for a laser product are overly restrictive in several areas. The present requirement in § 1040.10(f)(2)(i)(*b*) that the interlock preclude removal or displacement of the protective housing panel in the event of interlock failure prevents the use of alternate design approaches that are equally safe. In addition, under the current standard, the same interlock requirements apply without regard to the level of radiation to which human access may be gained in the event of interlock failure.

In the draft amendments, FDA suggested that the standard: (1) Require interlocks only for a laser product that would permit accessible radiation in excess of Class II levels, (2) require only one interlock for a laser product that provides Class III levels of visible accessible radiation up to 5 mW peak power, and (3) permit the optional use of redundant or "dual" switches that are not fail-safe as an alternative to the single fail-safe safety interlock that is required where access is possible to a Class III level of visible radiation of 5 mW or greater peak power, all Class III invisible radiation, and all Class IV laser radiation.

Several comments on the draft amendments favored relief from the safety interlock requirements but pointed out ambiguous language and errors in the draft amendments to § 1040.10(g)(7) requiring labeling and in the draft aments to § 1040.10(f)(2) requiring indication of failure of interlocks. FDA agrees that some of the draft language needed clarification. For example, it is apparent that the draft amendment not to require interlocks for Class II level of accessible radiation is inconsistent with the draft amendment for protective housing.

The agency now proposes to amend § 1040.10(f)(2) to require one or more safety interlocks to prevent human access to a level of laser radiation that exceeds Class I upon removal of a protective housing. Also, proposed revisions would require that the product design preclude the removal or displacement of a portion of a protective housing if failure of a single interlock would allow human access to laser radiation in excess of the accessible emission limits of proposed Class IIIa or to laser radiation greater than Class II if emitted directly through the opening created in the protective housing. However, the latter preclusion would not apply if more than one safety interlock were used.

After reconsideration of the draft proposed amendments, the agency is proposing to keep the existing requirement for an indication of safety interlock defeat but not require an indication of interlock failure. Also, the proposal retains the current requirement for preclusion of replacement of a removed or displaced panel in a protective housing when a safety interlock is defeated. Because Class IIa, Class II, and proposed Class IIIa laser products always emit visible laser radiation and, therefore, provide immediate visual indication of a safety interlock failure, FDA believes that these proposed changes are appropriate.

FDA is proposing appropriate conforming changes in the warning labels that are required by § 1040.10(g)(7) for a defeatably interlocked protective housing for each class of laser product.

Remote control connector. The remote control connector is intended to connect a laser product with any external protective barrier interlock, such as a door interlock or other appropriate remote control safety switch, to provide added safety for the operator or other persons during use of a higher-powered laser product. These safety switches are intended to interrupt and prevent emission of higher class laser radiation upon a person's entry into a hazardous or controlled area and are not intended as an operation control for the laser product. For these reasons, the agency proposes to change the name of such a switch from the "remote control connector" to the "remote interlock connector" and revise its definition in § 1040.10(b)(30) (renumbered as § 1040.10(b)(34) in this proposal) to indicate more clearly its intended purpose. FDA believes that a remote interlock connector is not needed on laser products that radiate below 5 mW in the visible wavelength range because these products do not pose a high risk of injury.

Therefore, the agency proposes to (1) revise the current requirement in § 1040.10(f)(3) that any Class III laser system incorporate a remote control connector and (2) require a remote interlock connector only on proposed Class IIIb and Class IV laser products.

Laser radiation emission indicator. The current requirement of § 1040.10(f)(5)(iii) for more than one emission indicator was intended to assure that operators and other personnel would be aware of the operational status of the laser product, when the laser and laser energy source components were housed separately. FDA had assumed that, under these conditions, the laser energy source would incorporate at least one of the operation controls. The agency has found, however, that some laser products use operation controls that are housed separately, at separation distances of greater than 2 meters from the laser and the laser energy source. In these situations, the operator may not be able to see or hear either of the emission indicators required by § 1040.10(f)(5)(iii). Thus, the operator may not become aware of an emission or capability of emission of laser radiation. In addition, some separately housed laser energy sources do not incorporate any operation controls. Under these circumstances, an emission indicator on the energy source would not serve a useful purpose. Therefore, in its draft amendments, the agency suggested that the standard be changed to require an emission indicator on the laser and on each of the laser system's operation controls if they are housed separately at a distance in excess of 2 meters from any portion of the laser product having an emission indicator. The agency also proposed to define "operation control"

to include any control that affects the laser or collateral radiation emitted by the product, other than safety interlocks or remote interlocks. Comments considered the draft changes logical, reasonable, and needed but suggested that the definition of "operation control" was unduly broad. The comments stated that "operation control" should be limited to the controls that turn emitted radiation on or off or vary the laser output power.

In light of the comments, the agency proposes to revise § 1040.10(f)(5)(iii) as suggested in the draft amendments, but has revised the proposed requirements for added clarity. Also, FDA has determined that a codified definition of operation control is unnecessary and is not proposing to define it. The agency advises, however, that it considers an operation control that affects the laser or collateral radiation emitted by the laser product during its operation to include a key control, manual reset mechanism, beam attenuator, or a variable intensity or speed control. Safety interlocks associated with a removable protective housing panel or exterior barrier interlocks and optional switches operated from a remote interlock connector would not be operation controls.

Delay in emission of radiation. Section 1040.10(f)(5)(ii) currently requires that an indication of emission for laser products classified above Class II shall occur sufficiently prior to emission of radiation to allow persons to take appropriate action to avoid exposure to the laser radiation. While acute direct exposure to the proposed Class IIIa levels of laser radiation can cause damage to human tissue and should be avoided, the agency believes that the requirement for an emission delay on laser products that can emit at these levels has only a marginal benefit.

Therefore, FDA proposes to revise § 1040.10(f)(5)(ii) to require a delay in the emission of radiation on only Class IIIb and Class IV laser products. Comments on the draft amendments favored this change, stating that it was justifiable and appropriate.

Manual reset mechanism. Laser radiation from Class III and Class IV laser products can cause permanent damage to the human eye over short emission durations. Direct exposure of eyes and skin to such radiation should be prevented. The agency believes that there is a need to protect the operator from the hazard associated with the unexpected resumption of radiation emission from higher-powered laser products following interruption of operation.

In the draft amendments, § 1040.10(f)(10) would have required Class III and Class IV laser systems to be manually reset in the event of interruption of operation for any reason, including temporary power failure, safety interlock operation, and use of the remote interlock connector. Some comments on the NOI argued that to equip laser products with a manual reset mechanism would be a major cost to manufacturers with little safety benefit to operators of laser products. Also, comments stated that a manual reset mechanism would be redundant to the emission indicator and delay requirements that provide adequate warnings to the operator. Other comments expressed qualified acceptance of this draft requirement but suggested that it would be unnecessary for single-pulse lasers or Class III products. The comments also stated that a laser product should be required to be reset manually only after specified interruptions, rather than "for any reason," and recommended that some time delay allowance be provided before the reset mechanism is activated.

In response to the comments, the agency now is proposing a new § 1040.10(f)(10), which would require Class IV laser products to be equipped with a manual reset mechanism with manual reset necessary only after the activation of a remote interlock connector or after an interruption of emission in excess of 5 seconds due to the unexpected loss of main electrical power.

Viewing optics. Unlike operation and maintenance, service of laser products often must be performed under circumstances which permit human access to higher levels of laser and collateral radiation. However, these activities are generally performed under controlled conditions, for shorter periods of time, and by specially trained technical personnel. For these reasons, in the draft amendments, FDA suggested that § 1040.10(f)(8) be revised to allow emissions through a viewing optic during service not to exceed the Class IIa accessible emission limits. The comments stated that allowing such a level of radiation during service is reasonable but recommended that the accessible emission limit during service be increased to 5 mW peak power for visible radiation.

FDA partially disagrees with the comments. The agency believes that increasing to 5 mW the limit of accessible emissions through a viewing optic during service as suggested by comments is not justified because of the potential hazards at this level. In addition, the agency notes that the language used in the draft could be interpreted to allow chronic viewing of Class II radiation levels.

FDA now believes that specifying in the standard limits on accessible emissions through a viewing optic during service will be too restrictive for some situations and potentially dangerous for others. The agency now is proposing to revise § 1040.10(f)(8) to eliminate the requirements for viewing optic performance during service and to amend § 1040.10(h)(2)(ii) to require that any servicing information contain adequate directions for the safe accomplishment of all service procedures. When an individual performs the specified service procedures, he or she shall not be exposed to levels of radiation FDA considers to be hazardous for any procedure or sequence of procedures to be accomplished. This proposed approach should allow manufacturers more flexibility by linking allowable levels of radiation exposure to the particular service procedures and the time needed to accomplish them, yet limit that exposure to levels of laser radiation that FDA does not consider to be hazardous.

Scanning safeguard. A dual-mode laser product may emit radiation within different classification limits depending on whether it is in a scanning mode or fixed-beam mode of operation. Under the classification procedures presently in § 1040.10(c), a dual-mode laser usually is classified in the fixed-beam mode of operation because more hazardous levels of radiation are emitted in this mode. The present wording of the standard makes it difficult for manufacturers of a dual-mode laser product to determine whether a scanning safeguard is required by the standard for these laser products.

In the draft amendments, FDA attempted to make clear the applicability of § 1040.10(f)(9) to dual-mode laser products. The draft amendments suggested that the requirement for a scanning safeguard be based solely on the change of radiation class of the scanned beam upon scan failure, independent of the classification of the product in the fixed-beam mode. Comments argued, however, that the safety benefit provided by a scanning safeguard on laser products with dual-mode capability is not as significant as that provided by a scanning safeguard on laser products limited only to the scanning mode.

FDA agrees with the comments. The agency now proposes not to require a

scanning safeguard for Class I, Class IIa, Class II, and proposed Class IIIa multimode laser products if, upon scan failure, the resultant accessible emission level of radiation does not exceed the limits of the class of the product. For proposed Class IIIb and Class IV laser products, however, a scanning safeguard would be required if the class of the scanned laser radiation would exceed the accessible emission limits for proposed Class IIIa as a result of a scan failure. This is necessary because of the exposure hazards presented by these laser systems.

Laser light shows. At the time of the development of the laser standard, FDA did not anticipate the widespread use of higher-powered lasers in light shows. Consequently, in most cases, it is impossible for a laser light show to meet the requirements in § 1040.11(c) for a "demonstration laser product" and produce the effects desirable for such a show. Therefore, FDA regulates a laser light show product by issuing a variance from the standard using procedures in 21 CFR 1010.4. FDA announced in the NOI that it intended to revise § 1040.11(c) to include specific requirements for laser light show products, thereby eliminating the need for variances.

In the draft amendments, FDA proposed to provide in § 1040.10 a specific definition of a laser light show. The agency also proposed to incorporate into § 1040.11 the radiation safety criteria used in laser light show variances. During the past several years, these safety criteria which were used as the conditions of approval of a variance have evolved into a standard format. The standard format for an application for a variance was made available to the industry in December 1979.

The draft amendments concerning laser light shows did not receive the number of substantive comments expected, and the agency has reconsidered the need for this revision. FDA now believes that the variance process constitutes a significant means of control over the laser light show industry. Of all laser products in commerce, these represent the greatest risk to the public health. The existing variance approval process allows the agency to become aware of any light show that is manufactured. Removing the need for a variance would significantly decrease the effectiveness of FDA's control of laser light shows. State, local, and Federal Aviation Administration officials now can easily verify a manufacturer's status through the agency's variance procedure. If variances were not required, however, FDA and other affected government agencies would be less likely to have available the information for timely use. In addition, due to the standardized format for submitting applications for variances, the variances process does not pose a significant administrative burden on FDA. For these reasons, the agency has determined it will continue to regulate the laser light show industry through the variance process.

Low power lasers. In response to the NOI, a comment argued that the current standard contains unnecessary and expensive requirements for low-powered helium-neon lasers without significant effect and recommended that the standard be relaxed in this area.

FDA partially agrees with the comment. FDA is proposing significant relaxation of the general requirements for laser products that emit visible laser radiation up to 5 mW. Therefore, the agency believes that it is not necessary to propose changes specifically applicable to helium-neon lasers.

Laser diodes. Two comments recommended that the agency clarify and reduce requirements for laser diodes. The comments said that the regulations impose high costs on the manufacturers of these products and asserted that such products have an accident-free record.

The agency disagrees with these comments. Laser diode technology has been advancing at a rapid pace. Laser diodes that radiate continuously over extended periods of time at power levels up to 20 mW have been developed. At these radiation levels, there is a significant potential for biological hazard. Further, the agency does not believe that these laser products are overregulated. While laser diodes and diode arrays are laser products, they are lasers and not laser systems. Therefore, to be certified, these products do not have to meet the provisions of the standard applicable only to laser systems. Essentially, laser diodes are required to meet only the performance requirement for protective housing. The labeling requirements consist of product certification, identification of manufacturer, warning logotype, and aperture label, all of which are allowed liberal alternative provisions. The combination of an AC or DC to DC converter with a pulse generator and a compatible laser diode is a laser system, and such a system must meet all the certification requirements, except when it is sold as an OEM component. For these reasons, the agency believes that laser diodes are controlled appropriately by the current performance standard and that the controls should not be changed.

Lasers intended for research and development. A comment said that some of the requirements in the standard were not appropriate for a laser product used in research and development.

FDA partially agrees with the comment. However, the laser standard is a performance standard, not a user standard, and the agency has very limited control over the use of general purpose laser products that are frequently used in research. If the requirements of the performance standard are not appropriate for a laser product specifically intended for research and development, the researcher may apply for a variance using procedures in 21 CFR Part 1010.

Measurement parameters. Section 1040.10(e)(3) of the laser standard now requires that measurements of radiant energy and power be made using an 80-millimeter (mm) diameter aperture stop for fixed-beam laser radiation and using a 7-mm diameter aperture stop for scanned laser radiation and using a 7-mm diameter aperture stop for scanned laser radiation. The requirement for an 80-mm diameter aperture stop was intended to protect against the focusing of laser radiation by use of a telescope or other optical instrument. Three comments on the NOI recommended that the 7-mm diameter aperture stop be used for all measurements of radiant energy and power because the use of a viewing optic is unlikely.

FDA tentatively agrees with the comments. FDA believes that an 80-mm aperture stop should not be required when the laser radiation is unlikely to be viewed with optical instruments. The agency also believes that the requirements for use of an 80-mm aperture is overly restrictive in the wavelength range from 2,500 nm to 1.0×10^{6} nm because conventional optical instruments do not transmit these wavelengths and the associated biological effects are primarily thermal. Also, the diameter of most entrance apertures for optical instruments does not exceed 50 mm. Therefore, the agency proposes to amend § 1040.10(e)(3)(i) to permit the use of a 7-mm aperture stop for the measurement of the radiant energy and power within a solid angle of acceptance of 1×10^{-3} steradian with collimating optics of 5 diopters or less. However, when the emitted laser radiation is likely to be viewed with optical instruments, FDA proposes that a 50-mm diameter aperture stop with the same acceptance angle and collimating optics be used to measure radiant energy or power. If the use of a 50-millimeter diameter aperture stop would result in the higher classification of a

product classified with a 7-millimeter diameter aperture stop, as provided in § 1040.10(e)(3)(i), a warning would be included in the user information per § 1040.10(h)(1)(vi) cautioning that the use of optical instruments with the product would increase eye hazard.

During the enforcement of the laser product performance standard, the agency has found that the specification of using a 7-mm diameter measurement aperture for scanning laser products to be inconsistent, and in some cases, inapproriate. The agency has noted the presence and use of viewing optics at laser light shows where scanning laser effects are common. Hence, the agency proposes amending § 1040.10(e) so that the measurement aperture selection criteria for scanning laser products would be the same as that proposed for radiant power and energy. The agency would continue to allow a 7-mm diameter measurement aperture for scanning laser products used in environments where laser radiation is unlikely to be viewed with optical instruments such as supermarkets, warehouses, or offices.

Key control. In § 1040.10(f)(4), the current standard requires that any laser product classified as a Class III or Class IV laser product be equipped with a key-activated master control. A comment on the NOI recommended that the agency exclude surveying, leveling, and alignment laser products from this requirement because unauthorized operation of these products rarely occurs and their visible beam provides safety.

FDA partially agrees with the comment. FDA has no measure of the extent of the unauthorized use of these special-purpose laser products. In the absence of such information, the agency believes it would be inappropriate to exclude these products as a group from the requirements for a key control. The agency believes, however, that the present requirements for a key control may be overly restrictive for proposed Class IIIa laser products. Therefore, on its own initiative, FDA proposes to amend § 1040.10(f)(4) to require a key control only on Class IIIb and Class IV laser products.

Beam attenuator. Under current § 1040.10(f)(6), a beam attenuator is required on each Class II, Class III, or Class IV laser product. Several comments on the NOI argued that, for low-power laser products, use of a beam attenuator is inappropriate and that the requirement increases the cost and complexity of these laser products, with little or no increase in product safety.

The agency partially agrees with the comments. FDA recognizes that use of a beam attenuator is unnecessary for some laser products. FDA also is aware, however, that many laser products may not maintain a steady emission output or may require a long recovery time if the main electrical power to the laser product is interrupted. When such a situation occurs if a beam attenuator is not required, unsafe conditions may result. The operator may not turn off the laser product when it is not needed or while making intrabeam adjustments or corrections.

Therefore, in new § 1040.10(f)(6)(ii), FDA proposes to exempt a manufacturer from the requirement to include a beam attenuator in the laser product when, through an application to FDA, the manufacturer shows that including a beam attenuator is unnecessary and that operator safety is maintained.

Although this regulation is issued only under the Radiation Control for Health and Safety Act, FDA also has authority to regulate a medical laser product under the medical device provisions of the Federal Food, Drug, and Cosmetic Act, as amended. FDA advises that § 1040.10(b)(26) applies to any laser product for human use that, because of its medical purposes, is a "device" under the latter statute.

The agency advises that references in Part 1040 to other regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted. Also, FDA is proposing several minor clarifying changes in language.

Interested persons are invited to participate in FDA's efforts to improve its laser product performance standard by submitting written data, views, or arguments concerning this proposal and any associated environmental or economic concerns.

Paperwork Reduction Act of 1980

Section 1040.10(a)(3) of this proposed rule contains information collection requirements. FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements under section 3504(h) of the Paperwork Reduction Act of 1980 as interpreted by OMB in 5 CFR Part 1320 (see 49 FR 13666; March 31, 1983). Other organizations and individuals desiring to submit comments on the collection of information requirments should direct them to FDA's Docket Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Rm. 3208), Washington, DC 20503, ATTN: Richard Eisinger.

Effective Date

FDA intends that, if promulgated, the final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**; except that FDA is proposing that the following proposed requirements be effective 1 year after the date of its publication in the **Federal Register** to provide manufacturers time to comply with new requirements: § 1040.10(a)(2)(i) and (3) regarding OEM component sales; § 1040.10(b)(19) regarding the definition of the applicable wavelength range; § 1040.10(f)(5)(iii) regarding the laser radiation emission indicator; and § 1040.10(f)(10) regarding the manual reset mechanism. FDA intends, however, to encourage manufacturers to comply as soon as possible with any provisions that are more restrictive than those in the current standard.

Background data and information supporting the proposal are available for public review under Docket Number 80N-0364 in the Dockets Management Branch (address above).

Regulatory Impact

The agency has examined the economic impact of this proposed rule and has determined that it requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch and may be seen in that Office between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 1000

Electronic products, Radiation protection, Recommendations, X-rays.

21 CFR Part 1040

Electronic products, HID lamps, Lasers, Medical laser products, Devices, Radiation protection, Standards, Sunlamps.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food

and Drugs (21 CFR 5.10), it is proposed that Parts 1000 and 1040 be amended as follows:

PART 1000—GENERAL

1. In Part 1000 by adding new § 1000.1, to read as follows:

§ 1000.1 General.

References in this Subchapter J to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

2. In Part 1040 by revising §§ 1040.10 and 1040.11, to read as follows:

§ 1040.10 Laser products.

(a) *Applicability.* The provisions of this section and § 1040.11 are applicable as specified to all laser products manufactured or assembled after August 1, 1976, except when:

(1) Such a laser product is either sold to a manufacturer of an electronic product for use as a component (or replacement) in such electronic products, or

(2) Sold by or for a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, provided that such laser product:

(i) Is accompanied by a general warning notice that adequate instructions for the safe installation of the laser product are provided in servicing information available from the complete laser product manufacturer under paragraph (h)(2)(ii) of this section, and should be followed,

(ii) Is labeled with a statement that it is designated for use solely as a component of such electronic product and therefore does not comply with the appropriate requirements of this section and § 1040.11 for complete laser products, and

(iii) Is not a removable laser system as described in paragraph (c)(2) of this section; and

(3) The manufacturer of such a laser product:

(i) Registers, and provides a listing by type of such laser products manufactured that includes the product name, model number and laser medium or emitted wavelength(s). The registration and listing shall include the name and address of the manufacturer and shall be submitted to the Director, Office of Compliance (HFX–400), National Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857.

(ii) Maintains and allows access to any sales, shipping, or distribution records that identify the purchaser of such a laser product by name and address, the product by type, the number of units sold, and the date of sale (shipment). These records shall be maintained and made available as specified in § 1002.31.

(b) *Definitions.* As used in this section and § 1040.11, the following definitions apply:

(1) "Accessible emission level" means the magnitude of accessible laser or collateral radiation of a specific wavelength and emission duration at a particular point as measured according to paragraph (e) of this section. Accessible laser or collateral radiation is radiation to which human access is possible, as defined in paragraph (b) (12), (15), and (22) of this section.

(2) "Accessible emission limit" means the maximum accessible emission level permitted within a particular class as set forth in paragraphs (c), (d), and (e) of this section.

(3) "Aperture" means any opening in the protective housing or other enclosure of a laser product through which laser or collateral radiation is emitted, thereby allowing human access to such radiation.

(4) "Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiation is measured.

(5) "Class I laser product" means any laser product that does not permit access during the operation to levels of laser radiation in excess of the accessible emission limits contained in Table I of paragraph (d) of this section.[1]

(6) "Class IIa laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table I, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table II–A of paragraph (d) of this section.[2]

(7) "Class II laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table II–A, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table II of paragraph (d) of this section.[3]

(8) "Class IIIa laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table II, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–A of paragraph (d) of this section.[4]

(9) "Class IIIb laser product" means any laser product that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of Table III–A, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–B of paragraph (d) of this section.[5]

(10) "Class III laser product" means any Class IIIa or Class IIIb laser product.

(11) "Class IV laser product" means any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–B of paragraph (d) of this section.[6]

(12) "Collateral radiation" means any electronic product radiation, except laser radiation, emitted by a laser product as a result of the operation of the laser(s) or any component of the laser product that is physically necessary for the operation of the laser(s).

(13) "Demonstration laser product" means any laser product manufactured, designed, intended, or promoted for purposes of demonstration, entertainment, advertising display, or artistic composition. The term "demonstration laser product" does not apply to laser products which are not manufactured, designed, intended, or promoted for such purposes, even though they may be used for those purposes or are intended to demonstrate other applications.

(14) "Emission duration" means the temporal duration of a pulse, a series of pulses, or continuous operation,

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[1] Class I levels of laser radiation are not considered to be hazardous.

[2] Class IIa levels of laser radiation are not considered to be hazardous if viewed for any period of time less than or equal to 1×10^3 seconds but are considered to be a chronic viewing hazard for any period of time greater than 1×10^3 seconds.

[3] Class II levels of laser radiation are considered to be a chronic viewing hazard.

[4] Class IIIa levels of laser radiation are considered to be, depending upon the irradiance, either an acute intrabeam viewing hazard or chronic viewing hazard, and an acute viewing hazard if viewed directly with optical instruments.

[5] Class IIIb levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct radiation.

[6] Class IV levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct and scattered radiation.

expressed in seconds, during which human access to laser or collateral radiation could be permitted as a result of operation, maintenance, or service of a laser product.

(15) "Human access" means the capacity to intercept laser or collateral radiation by any part of the human body. For laser products that contain Class IIIb or IV levels of laser radiation, "human access" also means access to laser radiation reflected by any single introduced flat surface from the interior of the product through any opening in the product.

(16) "Integrated radiance" means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter per steradian ($Jcm^{-2}sr^{-1}$).

(17) "Invisible radiation" means laser or collateral radiation having wavelengths of equal to or greater than 180 nm but less than or equal to 400 nm or greater than 710 nm but less than or equal to 1.0×10^6 nm (1 millimeter).

(18) "Irradiance" means the time-averaged radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimenter ($W\ cm^{-2}$).

(19) "Laser" means any device that can be made to produce or amplify electromagnetic radiation at wavelengths equal to or greater than 180 nm but less than or equal to $1.0X10^6$ nm primarily by the process of controlled stimulated emission.

(20) "Laser energy source" means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources such as electrical supply mains or batteries shall not be considered to constitute laser energy sources.

(21) "Laser product" means any manufactured product or assemblage of components which constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product shall itself be considered a laser product.

(22) "Laser radiation" means all electromagnetic radiation emitted by a laser product within the spectral range specified in paragraph (b)(19) of this section that is produced as a result of controlled stimulated emission or that is detectable with radiation so produced through the appropriate aperture stop and within the appropriate solid angle of acceptance, as specified in paragraph (e) of this section.

(23) "Laser system" means a laser in combination with an appropriate laser energy source with or without additional incorporated components. See paragraph (c)(2) of this section for a explanation of the term "removable laser system."

(24) "Maintenance" means performance of those adjustments or procedures specified in user information provided by the manufacturer with the laser product which are to be performed by the user for the purpose of assuring the intended performance of the product. It does not include operation or service as defined in paragraph (b) (27) and (38) of this section.

(25) "Maximum output" means the maximum radiant power and, where applicable, the maximum radiant energy per pulse of accessible laser radiation emitted by a laser product during operation, as determined under paragraph (e) of this section.

(26) "Medical laser product" means any laser product manufactured, designed, intended or promoted for purposes of in vivo diagnostic, surgical, or therapeutic laser irradiation of any part of the human body.

(27) "Operation" means the performance of the laser product over the full range of its functions. It does not include maintenance or service as defined in paragraph (b) (24) and (38) of this section.

(28) "Protective housing" means those portions of a laser product which are designed to prevent human access to laser or collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this section and in § 1040.11.

(29) "Pulse duration" means the time increment measured between the half-peak-power points at the leading and trailing edges of a pulse.

(30) "Radiance" means time-averaged radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian ($W\ cm^{-2}sr^{-1}$).

(31) "Radiant energy" means energy emitted, transferred or received in the form of radiation, expressed in joules (J).

(32) "Radiant exposure" means the radiant energy incident on an element of a surface divided by the area of the element, expressed in joules per square centimenter ($J\ cm^{-2}$)

(33) "Radiant power" means time-averaged power emitted, transferred or received in the form of radiation, expressed in watts (W).

(34) "Remote interlock connector" means an electrical connector which permits the connection of external remote interlocks.

(35) "Safety interlock" means a device asociated with the protective housing of a laser product to prevent human access to excessive radiation in accordance with paragraph (f)(2) of this section.

(36) "Sampling interval" means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol (t).

(37) "Scanned laser radiation" means laser radiation having a time-varying direction, origin or pattern of propagation with respect to a stationary frame of reference.

(38) "Service" means the performance of those procedures or adjustments described in the manufacturer's service instructions which may affect any aspect of the product's performance for which this section and § 1040.11 have applicable requirements. It does not include maintenance or operation as defined in paragraph (b) (24) and (27) of this section.

(39) "Surveying, leveling, or alignment laser product" means a laser product manufactured, designed, intended or promoted for one or more of the following uses:

(i) Determining and delineating the form, extent, or position of a point, body, or area by taking angular measurement.

(ii) Positioning or adjusting parts in proper relation to one another.

(iii) Defining a plane, level, elevation, or straight line.

(40) "Visible radiation" means laser or collateral radiation having wavelengths of greater than 400 nm but less than or equal to 710 nm.

(41) "Warning logotype" means a logotype as illustrated in either Figure 1 or Figure 2 of paragraph (g) of this section.

(42) "Wavelength" means the propagation wavelength in air of electromagnetic radiation.

(c) *Classification of laser products*—(1) *All laser products.* Each laser product shall be classified in Class I, IIa, II, IIIa, IIIb, or IV in accordance with definitions set forth in paragraphs (b) (5) through (11) of this section. The product classification shall be based on the highest accessible emission level(s) of laser radiation to which human access is possible during operation in accordance with paragraphs (d), (e), and (f)(1) of this section.

(2) *Removable laser systems.* Any laser system that is incorporated into a laser product subject to the requirements of this section and that is capable, without modification, of producing laser radiation when removed from such laser product, shall itself be considered a laser product and shall be separately subject to the applicable requirements in this subchapter for laser products of its class. It shall be

classified on the basis of accessible emission of laser radiation when so removed.

(d) *Accessible emission limits.* Accessible emission limits for laser radiation in each class are specified in Tables I, II–A, II, III–A and III–B of this paragraph. The factors k_1 and k_2 vary with wavelength and emission duration. These factors are given in Table IV of this paragraph, with selected numerical values in Table V of this paragraph. Accessible emission limits for collateral radiation are specified in Table VI of this paragraph.

Notes applicable to Tables I, II–A, II, III–A and III–B:

(1) The factors k_1 and k_2 are wavelength-dependent correction factors determined from Table IV.

(2) The variable t in the expressions of emission limits is the magnitude of the sampling interval in units of seconds.

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TABLE I

CLASS I ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

Wavelength (nanometers)	Emission duration (seconds)	Class I-Accessible emission limits		
		(value)	(unit)	(quantity)**
≥180 but ≤400	≤3.0 X 10^{4}	2.4 X $10^{-5}k_1k_2$*	Joules(J)*	radiant energy
	>3.0 X 10^{4}	8.0 X $10^{-10}k_1k_2$*	Watts(W)*	radiant power
>400 but ≤1400	>1.0 X 10^{-9} to 2.0 X 10^{-5}	2.0 X $10^{-7}k_1k_2$	J	radiant energy
	>2.0 X 10^{-5} to 1.0 X 10^{1}	7.0 X $10^{-4}k_1k_2t^{3/4}$	J	radiant energy
	>1.0 X 10^{1} to 1.0 X 10^{4}	3.9 X $10^{-3}k_1k_2$	J	radiant energy
	>1.0 X 10^{4}	3.9 X $10^{-7}k_1k_2$	W	radiant power
	and also (See paragraph (d)(4) of this section)			
	>1.0 X 10^{-9} to 1.0 X 10^{1}	$10k_1k_2t^{1/3}$	$Jcm^{-2}sr^{-1}$	integrated radiance
	>1.0 X 10^{1} to 1.0 X 10^{4}	$20k_1k_2$	$Jcm^{-2}sr^{-1}$	integrated radiance
	>1.0 X 10^{4}	2.0 X $10^{-3}k_1k_2$	$Wcm^{-2}sr^{-1}$	radiance
>1400 but ≤2500	>1.0 X 10^{-9} to 1.0 X 10^{-7}	7.9 X $10^{-5}k_1k_2$	J	radiant energy
	>1.0 X 10^{-7} to 1.0 X 10^{1}	4.4 X $10^{-3}k_1k_2t^{1/4}$	J	radiant energy
	>1.0 X 10^{1}	7.9 X $10^{-4}k_1k_2$	W	radiant power
>2500 but ≤1.0 X 10^{6}	>1.0 X 10^{-9} to 1.0 X 10^{-7}	1.0 X $10^{-2}k_1k_2$	Jcm^{-2}	radiant exposure
	>1.0 X 10^{-7} to 1.0 X 10^{1}	5.6 X $10^{-1}k_1k_2t^{1/4}$	Jcm^{-2}	radiant exposure
	>1.0 X 10^{1}	1.0 X $10^{-1}k_1k_2t$	Jcm^{-2}	radiant exposure

*Class I accessible emission limits for wavelengths equal to or greater than 180 nm but less than or equal to 400 nm shall not exceed the Class I accessible emission limits for the wavelengths greater than 1400 nm but less than or equal to 1.0 X 10^{6} nm with a k_1 and k_2 of 1.0 for comparable sampling intervals.

**Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

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TABLE II-A

CLASS IIa ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

CLASS IIa ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT:				
Wavelength (nanometers)	Emission duration (seconds)	Class IIa-Accessible emission limits		
		(value)	(unit)	(quantity)*
>400 but ≤710	$>1.0 \times 10^{3}$	3.9×10^{-6}	W	radiant power

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE II

CLASS II ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

CLASS II ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT:				
Wavelength (nanometers)	Emission duration (seconds)	Class II-Accessible emission limits		
		(value)	(unit)	(quantity)*
>400 but ≤710	$>2.5 \times 10^{-1}$	1.0×10^{-3}	W	radiant power

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE III-A

CLASS IIIa ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

CLASS IIIa ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT:				
Wavelength (nanometers)	Emission duration (seconds)	Class IIIa-Accessible emission limits		
		(value)	(unit)	(quantity)*
>400 but ≤710	$>3.8 \times 10^{-4}$	5.0×10^{-3}	W	radiant power

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE III-B

CLASS IIIb ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

Wavelength (nanometers)	Emission duration (seconds)	Class IIIb-Accessible emission limits (value)	(unit)	(quantity)*
≥180 but ≤400	≤2.5 X 10^{-1}	3.8 X $10^{-4}k_1k_2$	J	radiant energy
	>2.5 X 10^{-1}	1.5 X $10^{-3}k_1k_2$	W	radiant power
>400 but ≤1400	>1.0 X 10^{-9} to 2.5 X 10^{-1}	$10k_1k_2t^{1/3}$ to a maximum value of 10	Jcm^{-2}	radiant exposure
			Jcm^{-2}	radiant exposure
	>2.5 X 10^{-1}	5.0 X 10^{-1}	W	radiant power
>1400 but ≤1.0 X 10^6	>1.0 X 10^{-9} to 1.0 X 10^1	10	Jcm^{-2}	radiant exposure
	>1.0 X 10^1	5.0 X 10^{-1}	W	radiant power

*Measurement parameter and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE IV

VALUES OF WAVELENGTH DEPENDENT CORRECTION FACTORS k_1 AND k_2

Wavelength (nanometers)	k_1	k_2		
180 to 302.4	1.0	1.0		
> 302.4 to 315	$10^{\left[\frac{\lambda - 302.4}{5}\right]}$	1.0		
> 315 to 400	330.0	1.0		
> 400 to 700	1.0	1.0		
> 700 to 800	$10^{\left[\frac{\lambda - 700}{515}\right]}$	if: $t \leq \frac{10100}{\lambda - 699}$ then: $k_2 = 1.0$	if: $\frac{10100}{\lambda - 699} < t \leq 10^4$ then: $k_2 = \frac{t(\lambda - 699)}{10100}$	if: $t > 10^4$ then: $k_2 = \frac{\lambda - 699}{1.01}$
> 800 to 1060	$10^{\left[\frac{\lambda - 700}{515}\right]}$	if: $t \leq 100$ then: $k_2 = 1.0$	if: $100 < t \leq 10^4$ then: $k_2 = \frac{t}{100}$	if: $t > 10^4$ then: $k_2 = 100$
> 1060 to 1400	5.0			
> 1400 to 1535	1.0	1.0		
> 1535 to 1545	$t \leq 10^{-7}$ $k_1 = 100.0$	1.0		
	$t > 10^{-7}$ $k_1 = 1.0$			
> 1545 to 1.0×10^6	1.0	1.0		

Note: The variables in the expressions are the magnitudes of the sampling interval(t), in units of seconds, and the wavelength (λ), in units of nanometers.

TABLE V

SELECTED NUMERICAL SOLUTIONS FOR k_1 AND k_2

Wavelength (nanometers)	k_1	k_2				
		$t \leq 100$	$t=300$	$t=1000$	$t=3000$	$t \geq 10{,}000$
180	1.0	1.0				
300	1.0					
302	1.9					
303	1.32					
304	2.09					
305	3.31					
306	5.25					
307	8.32					
308	13.2					
309	20.9					
310	33.1					
311	52.5					
312	83.2					
313	132.0					
314	209.0					
315	330.0					
400	330.0					
401	1.0					
500	1.0					
600	1.0					
700	1.0					
710	1.05	1	1	1.1	3.3	11.0
720	1.09	1	1	2.1	6.3	21.0
730	1.14	1	1	3.1	9.3	31.0
740	1.20	1	1.2	4.1	12.0	41.0
750	1.25	1	1.5	5.0	15.0	50.0
760	1.31	1	1.8	6.0	18.0	60.0
770	1.37	1	2.1	7.0	21.0	70.0
780	1.43	1	2.4	8.0	24.0	80.0
790	1.50	1	2.7	9.0	27.0	90.0
800	1.56	1	3.0	10.0	30.0	100.0
850	1.95	1	3.0	10.0	30.0	100.0
900	2.44	1	3.0	10.0	30.0	100.0
950	3.05	1	3.0	10.0	30.0	100.0
1000	3.82	1	3.0	10.0	30.0	100.0
1050	4.78	1	3.0	10.0	30.0	100.0
1060	5.00	1	3.0	10.0	30.0	100.0
1100	5.00	1	3.0	10.0	30.0	100.0
1400	5.00	1	3.0	10.0	30.0	100.0
1500	1.0	1.0				
1540	100.0*					
1600	1.0					
1.0×10^6	1.0					

* The factor $k_1 = 100.0$ when $t \leq 10^{-7}$, and $k_1 = 1.0$ when $t > 10^{-7}$

Note: The variable (t) is the magnitude of the sampling interval in units of seconds.

TABLE VI

ACCESSIBLE EMISSION LIMITS FOR COLLATERAL RADIATION FROM LASER PRODUCTS

1. Accessible emission limits for collateral radiation having wavelengths greater than 180 nanometers but less than or equal to 1.0×10^6 nanometers are identical to the accessible emission limits of Class I laser radiation, as determined from Tables I and IV in this paragraph.

i. In the wavelength range of less than or equal to 400 nanometers, for all emission durations;

ii. In the wavelength range of greater than 400 nanometers, for all emission durations less than or equal to 1×10^3 seconds and, when applicable under paragraph (f)(8) of this section, for all emission durations.

2. Accessible emission limit for collateral radiation within the x-ray range of wavelengths is 0.5 milliroentgen in an hour, averaged over a cross-section parallel to the external surface of the product, having an area of 10 square centimeters with no dimension greater than 5 centimeters.

(1) *Beam of a single wavelength.* Laser or collateral radiation of a single wavelength exceeds the accessible emission limits of a class if its accessible emission level is greater than the accessible emission limit of that class within any of the ranges of emission duration specified in Tables I, II–A, II, III–A, and III–B of this paragraph.

(2) *Beam of multiple wavelengths in same range.* Laser or collateral radiation having two or more wavelengths within any one of the wavelength ranges specified in Tables I, II–A, II, III–A, and III–B of this paragraph exceeds the accessible emission limits of a class if the sum of the ratios of the accessible emission level to the corresponding accessible emission limit at each such wavelength is greater than unity for that combination of emission duration and wavelength distribution which results in the maximum sum.

(3) *Beam with multiple wavelengths in different ranges.* Laser or collateral radiation having wavelengths within two or more of the wavelength ranges specified in Tables I, II–A, II, III–A, and III–B of this paragraph exceeds the accessible emission limits of a class it it exceeds the applicable limits within any one of those wavelength ranges. This determination is made for each wavelength range in accordance with paragraph (d) (1) or (2) of this section.

(4) *Class I dual limits.* Laser or collateral radiation in the wavelength range of greater than 400 nm but less than or equal to 1,400 nm exceeds the accessible emission limits of Class I if it exceeds both:

(i) The Class I accessible emission limits for radiant energy within any range of emission duration specified in Table I of this paragraph, and

(ii) The Class I accessible emission limits for integrated radiance within any range of emission duration specified in Table I of this paragraph.

(e) *Tests for determination of compliance*—(1) *Tests for certification.* Tests on which certification under § 1010.2 is based shall account for all errors and statistical uncertainties in the measurement process. Because compliance with the standard is required for the useful life of a product, such tests shall also account for increases in emission and degradation in radiation safety with age.

(2) *Test conditions.* Except as provided in § 1010.13, tests for compliance with each of the applicable requirements of this section and § 1040.11 shall be made during operation, maintenance, or service as appropriate:

(i) Under those conditions and procedures which maximize the accessible emission levels, including start-up, stabilized emission, and shut-down of the laser product; and

(ii) With all controls and adjustments listed in the operation, maintenance, and service instructions adjusted in combination to result in the maximum accessible emission level of radiation; and

(iii) At points in space to which human access is possible in the product configuration which is necessary to determine compliance with each requirement, e.g., if operation may require removal of portions of the protective housing and defeat of safety interlocks, measurements shall be made at points accessible in that product configuration; and

(iv) With the measuring instrument detector so positioned and so oriented with respect to the laser product as to result in the maximum detection of radiation by the instrument; and

(v) For a laser product other than a laser system, with the laser coupled to that type of laser energy source which is specified as compatible by the laser product manufacturer and which produces the maximum emission level of accessible radiation from that product.

(3) *Measurement parameters.* Accessible emission levels of laser and collateral radiation shall be based upon the following measurements as appropriate, or their equivalent:

(i) For laser products intended to be used in an environment where the emitted laser radiation is unlikely to be viewed with optical instruments, the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within a circular solid angle of acceptance of 1×10^{-3} steradian with collimating optics of 5 diopters or less. Otherwise, a 50 millimeter diameter aperture stop with the same collimating optics and acceptance angle stated above shall be used.

(ii) The irradiance ($W\ cm^{-2}$) or radiant exposure ($J\ cm^{-2}$) eqivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and, for irradiance, within a circular solid angle of acceptance of 1×10^{-3} steradian with collimating optics of 5 diopters or less, divided by the area of the aperture stop (cm^{-2}).

(iii) The radiance ($W\ cm^{-2}\ sr^{-1}$) or integrated radiance ($J\ cm^{-2}\ sr^{-1}$) equivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within a circular solid angle of acceptance of 1×10^{-5} steradian with collimating optics of 5 diopters or less, divided by that solid angle (sr) and by the area of the aperture stop (cm^{-2}).

(4) *Measurement parameters for scanned laser radiation.* Accessible emission levels of scanned laser radiation shall be based upon the measurement of radiation detectable through a stationary circular aperture stop having either a 7-millimeter or 50-millimeter diameter as required in paragraph (e)(3)(i) of this section, and within the circular solid angle of acceptance with collimating optics applicable under paragraph (e)(3) of this section, or the equivalent. The direction of the solid angle of acceptance shall change as needed to maximize detectable radiation, with an angular speed of up to 5 radians/second.

(f) *Performance requirements*—(1) *Protective housing.* Each laser product shall have a protective housing that prevents human access during operation to laser and collateral radiation that exceed the limits of Class I and Table VI, respectively (paragraph (d) of this section), wherever and whenever such human access is not necessary in order for the product to perform its intended function. Wherever and whenever human access to laser radiation levels that exceed the limits of Class I is necessary, these levels shall not exceed the limits of the lowest class necessary to perform the intended function(s) of the product.

(2) *Safety interlocks.* (i) Each laser product, regardless of its class, shall be provided with at least one safety interlock for each portion of the protective housing which is designed to be removed or displaced during operation or maintenance, if removal or displacement of the protective housing could permit, in the absence of such interlock(s), human access to laser or collateral radiation in excess of the accessible emission limit applicable under paragraph (f)(1) of this section.

(ii) Each required safety interlock, unless defected, shall prevent such human access to laser and collateral radiation upon removal or displacement of such portion of the protective housing.

(iii) Either multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing shall be provided, if failure of a single interlock would allow:

(*a*) Human access to level of laser radiation in excess of the accessible emission limits of Class IIIa, or

(*b*) Laser radiation in excess of the accessible emission limits of Class II to be emitted directly through the opening

created by removal or displacement of the interlocked portion of the protective housing.

(iv) Laser products that incorporate safety interlocks designed to allow safety interlock defeat shall incorporate a means of visual or aural indication of interlock defeat. During interlock defeat, such indication shall be visible or audible whenever the laser product is energized, with and without the associated portion of the protective housing removed or displaced.

(v) Replacement of a removed or displaced portion of the protective housing shall not be possible while required safety interlocks are defeated.

(3) *Remote interlock connector.* Each laser system classified as a Class IIIb or IV laser product shall incorporate a readily available remote interlock connector having an electrical potential difference of no greater than 130 root-mean-square volts between terminals. When the terminals of the connector are not electrically joined, human access to all laser and collateral radiation from the laser product in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section shall be prevented.

(4) *Key control.* Each laser system classified as a Class IIIb or IV laser product shall incorporate a key-actuated master control. The key shall be removable and the laser shall not be operable when the key is removed.

(5) *Laser radiation emission indicator.* (i) Each laser system classified as a Class II or IIIa laser product shall incorporate an emission indicator that provide a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I.

(ii) Each laser system classified as a Class IIIb or IV laser product shall incorporate an emission indicator which provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I, and sufficiently prior to emission of such radiation to allow appropriate action to avoid exposure to the laser radiation.

(iii) Each separately housed laser and operation control of a laser system that regulates the laser or collateral radiation emitted by a product during operation shall incorporate an emission indicator as required in accordance with paragraph (f)(5) (i) or (ii) of this section, if the laser or operation control can be operated at a separation distance greater than 2 meters from any other separately housed portion of the laser product incorporating an emission indicator.

(iv) Any visible signal required by paragraph (f)(5) (i) or (ii) of this section shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation.

(v) Emission indicators required by paragraph (f)(5) (i) or (ii) of this section shall be located so that viewing does not require human exposure to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(6) *Beam attenuator.* (i) Each laser system classified as a Class II, III, or IV laser product shall be provided with one or more permanently attached means, other than laser energy source switch(es), electrical supply main connectors, or the key-actuated master control, capable of preventing access by any part of the human body to all laser and collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(ii) If the configuration, design, or function of the laser product would make unnecessary compliance with the requirement in paragraph (f)(6)(i) of this section, the Director, National Center for Devices and Radiological Health, may, upon written application by the manufacturer, approve alternate means to accomplish the radiation protection provided by the beam attenuator.

(7) *Location of controls.* Each Class IIa, II, III, or IV laser product shall have operational and adjustment controls located so that human exposure to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section is unnecessary for operation or adjustement of such controls.

(8) *Viewing optics.* All viewing optics, viewports, and display screens incorporated into a laser product, regardless of its class, shall limit the levels of laser and collateral radiation accessible to the human eye by means of such viewing optics, viewports, or display screens during operation or maintenance to less than the accessible emission limits of Class I and Table VI of paragraph (d) of this section. For any shutter or variable attenuator incorporated into such viewing optics, viewports, or display screens, a means shall be provided:

(i) To prevent access by the human eye to lasser and collateral radiation in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section whenever the shutter is opened or the attenuator varied.

(ii) To preclude, upon failure of such means as required in paragraph (f)(8)(i) of this section, opening the shutter or varying the attenuator when access by the human eye is possible to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section.

(9) *Scanning safeguard.* Laser products that emit accessible scanned laser radiation shall not, as a result of any failure causing a change in either scan velocity or amplitude, permit human access to laser radiation in excess of:

(i) The accessible emission limits of the class of the product for Class I, IIa, II, and IIIa laser products, or

(ii) The accessible emission limits of Class IIIa scanned laser radiation for Class IIIb and IV laser products.

(10) *Manual reset mechanism.* Each Class IV laser system shall require manual reset to enable resumption of laser radiation emission after interrruption of emission caused by the use of a remote interlock or after an interruption of emission in excess of 5 seconds duration due to the unexpected loss of main electrical power.

(g) *Labeling requirements.* In addition to the requirements of §§ 1010.2 and 1010.3, each laser product shall be subject to the applicable labeling requirements of this paragraph.

(1) *Class IIa and II designations and warnings.* (i) Each Class IIa laser product shall have affixed a label bearing the following wording: "Class IIa Laser Product—Avoid Long-Term Viewing of Direct Laser Radiation."

(ii) Each Class II laser product shall have affixed a label bearing the warning logotype A (Figure 1 in this paragraph) and including the following wording:

[Position I on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM"; and

[Position 3 on the logotype]

"CLASS II LASER PRODUCT".

WARNING LOGOTYPE A

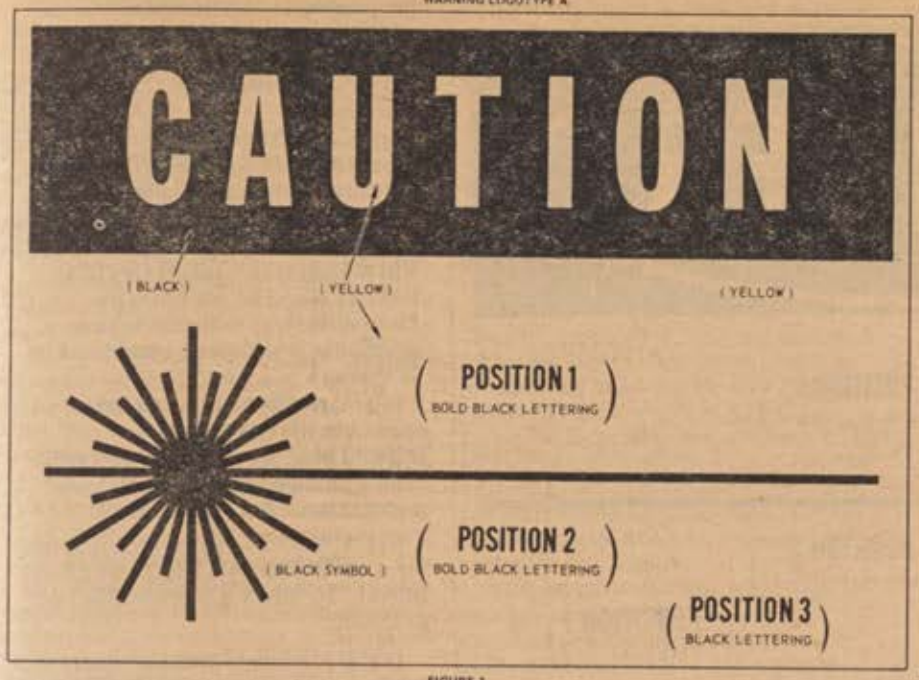


FIGURE 1

(2) *Class III designations and warnings.* (i) Each Class IIIa laser product with an irradiance less than or equal to 2.5×10^{-3} W cm^{2-} shall have affixed a label bearing the warning logotype A (Figure 1 of paragraph (g)(1)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS"; and,

[Position 3 on the logotype]

"CLASS IIIa LASER PRODUCT".

(ii) Each Class IIIa laser product with an irradiance greater than 2.5×10^{-3} W cm^{-2} shall have affixed a label bearing the warning logotype B (Figure 2 in this paragraph) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EYE EXPOSURE"; and,

[Position 3 on the logotype]

"CLASS IIIa LASER PRODUCT".

WARNING LOGOTYPE B



FIGURE 2

(iii) Each Class IIIb laser product shall have affixed a label bearing the warning logotype B (Figure 2 of paragraph (g)(2)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EXPOSURE TO BEAM"; and,

[Position 3 on the logotype]

"CLASS IIIb LASER PRODUCT".

(3) *Class IV designation and warning.* Each Class IV laser product shall hve affixed a label bearing the warning logotype B (Figure 2 of paragraph (g)(2)(ii) of this section), and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION"; and,

[Position 3 on the logotype]

"CLASS IV LASER PRODUCT".

(4) *Radiation output information on warning logotype.* Each Class II, III, and IV laser product shall state in appropriate units, at position 2 on the required warning logotype, the maximum output of laser radiation, the pulse duration when appropriate, and the laser medium or emitted wavelength(s).

(5) *Aperture label.* Each laser product, except medical laser products and Class IIa laser products, shall have affixed, in close proximity to each aperture through which is emitted accessible laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section, a label(s) bearing the following wording as applicable.

(i) "AVOID EXPOSURE—Laser radiation is emitted from this aperture," if the radiation emitted through such aperture is laser radiation.

(ii) "AVOID EXPOSURE—Hazardous electromagnetic radiation is emitted from this aperture," if the radiation emitted through such aperture is collateral radiation described in Table VI, item 1.

(iii) "AVOID EXPOSURE—Hazardous x-rays are emitted from this aperture," if the radiation emitted through such aperture is collateral radiation described in Table VI, item 2.

(6) *Labels for noninterlocked protective housings.* For each laser product, labels shall be provided for each portion of the protective housing which has no safety interlock and which is designed to be displaced or removed during operation, maintenance, or service, and thereby could permit human access to laser or collateral radiation in excess of the limits of Class I and Table VI in paragraph (d) of this section. Such labels shall be visible on the protective housing prior to displacement or removal of such portion of the protective housing and visible on the product in close proximity to the opening created by removal or displacement of such portion of the protective housing, and shall include the wording:

(i) "CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM." for Class II accessible laser radiation.

(ii) "CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS." for Class IIIa accessible laser radiation with an irradiance less than or equal to 2.5×10^{-3} W cm^{-2}.

(iii) "DANGER—Laser radiation when open. AVOID DIRECT EYE EXPOSURE." for Class IIIa accessible laser radiation with an irradiance of greater than 2.5×10^{-3} W cm^{-2}.

(iv) "DANGER—Laser radiation when open. AVOID DIRECT EXPOSURE TO BEAM." for Class IIIb accessible laser radiation.

(v) "DANGER—Laser radiation when open. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION." for Class IV accessible laser radiation.

(vi) "CAUTION—Hazardous electromagnetic radiation when open." for collateral radiation in excess of the accessible emission limits in Table VI, item 1 of paragraph (d) of this section.

(vii) "CAUTION—Hazardous x-rays when open." for collateral radiation in excess of the accessible emission limits in Table VI, item 2 of paragraph (d) of this section.

(7) *Labels for defeatably interlocked protective housings.* For each laser product, labels shall be provided for each defeatably interlocked (as described in paragraph (f)(2)(iv) of this section) portion of the protective housing which is designed to be displaced or removed during operation, maintenance, or service, and which upon interlock defeat could permit human access to laser or collateral radiation in excess of the limits of Class I or Table VI in paragraph (d) of this section. Such labels shall be visible on the product prior to and during interlock defeat and in close proximity to the opening created by the removal or displacement of such portion of the protective housing, and shall include the wording:

(i) "CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM." for Class II accessible laser radiation.

(ii) "CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS." for Class IIIa accessible laser radiation with an irradiance less than or equal to 2.5×10^{-3} W cm^{-2}.

(iii) "DANGER—Laser radiation when open and interlock defeated. AVOID DIRECT EYE EXPOSURE." for Class IIIa accessible laser radiation with an irradiance greater than 2.5×10^{-3} W cm^{-2}.

(iv) "DANGER—Laser radiation when open and interlock defeated. AVOID DIRECT EXPOSURE TO BEAM." for Class IIIb accessible laser radiation.

(v) "DANGER—Laser radiation when open and interlock defeated. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION." for Class IV accessible laser radiation.

(vi) "CAUTION—Hazardous electromagnetic radiation when open and interlock defeated." for collateral radiation in excess of the accessible emission limits in Table VI, item 1 of paragraph (d) of this section.

(vii) "CAUTION—Hazardous x-rays when open and interlock defeated." for collateral radiation in excess of the accessible emission limits in Table VI, item 2 of paragraph (d) of this section.

(8) *Warning for invisible radiation.* On the labels specified in this paragraph, if the laser or collateral radiation referred to is:

(i) Invisible radiation, the word "invisible" shall appropriately precede the word "radiation"; or

(ii) Visible and invisible radiation, the words "visible and invisible" or "visible and/or invisible" shall appropriately precede the word "radiation."

(9) *Positioning of labels.* All labels affixed to a laser product shall be positioned so as to make unnecessary, during reading, human eposure to laser radiation in excess of the accessible emission limits of Class I radiation or the limits of collateral radiation established in Table VI of paragraph (d) of this section.

(10) *Label specifications.* Labels required by this section and § 1040.11 shall be permanently affixed to, or inscribed on, the laser product, legible, and clearly visible during operation, maintenance, or service, as appropriate. If the size, configuration, design, or function of the laser product would preclude compliance with the requirements for any required label or would render the required wording of such label inappropriate or ineffective, the Director, National Center for Devices and Radiological Health, on the Director's own initiative or upon written application by the manufacturer, may approve alternate means of providing such label(s) or alternate wording for such label(s) as applicable.

(h) *Informational requirements*—(1) *User information.* Manufacturers of laser products shall provide as an integral part of any user instruction or operation manual which is regularly supplied with the product, or, if not so supplied, shall cause to be provided with each laser product:

(i) Adequate instructions for assembly, operation, and maintenance, including clear warnings concerning precautions to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and § 1040.11.

(ii) A statement of the magnitude, in appropriate units, of the pulse duration(s), maximum radiant power and, where applicable, the maximum radiant energy per pulse of the accessible laser radiation detectable in each direction in excess of the accessible emission limits in Table I of paragraph (d) of this section determined under paragraph (e) of this section.

(iii) Legible reproductions (color optional) of all labels and hazard warnings required by paragraph (g) of this section and § 1040.11 to be affixed to the laser product or provided with the laser product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1)(ii) or Figure 2 of paragraph (g)(2)(ii) of this section). The corresponding position of each label affixed to the product shall be indicated or, if provided with the product, a statement that such labels could not be affixed to the product but were supplied with the product and a statement of the form and manner in which they were supplied shall be provided.

(iv) A listing of all controls, adjustments, and procedures for operation and maintenance, including the warning "Caution—use of controls or adjustments or performance of procedures other than those specified herein may result in hazardous radiation exposure."

(v) In the case of laser products other than laser systems, a statement of the compatibility requirements for a laser energy source that will assure compliance of the laser product with this section and § 1040.11.

(vi) In the case of laser products classified with a 7 millimeter diameter aperture stop as provided in paragraph (e)(3)(i) of this section, if the use of a 50 millimeter diameter aperture stop would result in a higher classification of the product, the following warning shall be included in the user information: "CAUTION—The use of optical instruments with this product will increase eye hazard."

(2) *Purchasing and servicing information.* Manufacturers of laser products shall provide or cause to be provided:

(i) In all catalogs, specification sheets, and descriptive brochures pertaining to each laser product, a legible reproduction (color optional) of the class designation and warning required by paragraph (g) of this section to be affixed to that product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1)(ii) or Figure 2 of paragraph (g)(2)(ii) of this section).

(ii) To servicing dealers and distributors and to others upon request at a cost not to exceed the cost of preparation and distribution, adequate instructions for service adjustments and service procedures for each laser product model, including clear warnings and precautions to be taken to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and § 1040.11; and in all such service instructions, a listing of those controls and procedures that could be utilized by persons other than the manufacturer or his agents to increase accessible emission levels of radiation and a clear description of the location of displaceable portions of the protective housing that could allow human access to laser or collateral radiation in excess of the accessible emission limits in Table I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section. The instructions shall include protective procedures for service personnel to avoid exposure to levels of laser and collateral radiation known to be hazardous for each procedure or sequence of procedures to be accomplished, and legible reproductions (color optional) of required labels and hazard warnings.

(i) *Modification of a certified product.* The modification of a laser product, previously certified under § 1010.2, by any person engaged in the business of manufacturing, assembling, or modifying laser products shall be construed as manufacturing under the act if the modification affects any aspect of the product's performance or intended

function(s) for which this section and § 1040.11 have an applicable requirement. The manufacturer who performs such modification shall recertify and reidentify the product in accordance with the provisions of §§ 1010.2. and 1010.3.

§ 1040.11 Specific purpose laser products.

(a) *Medical laser products.* Each medical laser product shall comply with all of the applicable requirements of § 1040.10 for laser products of its class. In addition, the manufacturer shall:

(1) Incorporate in each Class III of IV medical laser product a means for the measurement of the level of that laser radiation intended for irradiation of the human body with an error in measurement of no more than ± 20 percent when calibrated in accordance with paragraph (a)(2) of this section. Indication of the measurement shall be in International System Units.

(2) Supply with each Class III or IV medical laser product instructions specifying a procedure and schedule for calibration of the measurement system required by paragraph (a)(1) of this section.

(3) Affix to each medical laser product, in close proximity to each aperture through which is emitted accessible laser radiation in excess of the accessible emission limits of Class I, a lable bearing the wording: "Laser aperture."

(b) *Surveying, leveling, and alignment laser products.* Each surveying, leveling, or alignment laser product shall comply with all of the applicable requirements of § 1040.10 for a Class I, IIa, II or IIIa laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class IIIa.

(c) *Demonstration laser products.* Each demonstration laser product shall comply with all of the applicable requirements of § 1040.10 for a Class I, IIa, or II laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class I and, if applicable, Class IIa or Class II.

Interested persons may, on or before January 30, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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 office above between 9 a.m and 4 p.m., Monday through Friday.

Dated: September 14, 1983.

Mark Novitch,

Acting Commissioner of Food and Drug.

[FR Doc. 83-31807 Filed 11-29-83; 8:45 am]

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federal register

Wednesday
November 30, 1983

Part III

Department of Health and Human Services

Office of Human Development Services

Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1397

Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Final rule.

SUMMARY: On March 1, 1983, the Office of Human Development Services (HDS) published in the **Federal Register** (48 FR 8453) a final rule with a 60 day comment period to amend 45 CFR Part 1397, Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside. (These requirements are known as the "Keys amendment" regulations).

In response to comments, we have made one change in this final rule to allow States the option of charging a fee for providing copies of standards, procedures or other information on these facilities.

In addition, we have received OMB clearance for the reporting and recordkeeping requirements in §§ 1397.10 and 1397.20.

DATES: Part 1397 was effective as of March 31, 1983 with the following two exceptions. First, the reporting and recordkeeping requirements of § 1397.10 (e) and (f) have received approval from OMB and are effective November 30, 1983. (Note that the part of § 1397.10(e) requiring annual certification is in § 1616(e)(3) of the Social Security Act and has thus been effective since October 1, 1977.) Second, § 1397.20(d)(2) which is changed by this publication is effective December 30, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Rust, Director, Office of Policy Coordination and Review, (202) 245-7027.

SUPPLEMENTARY INFORMATION:

Background

Standard-setting requirements for medical (not certified for Medicare or Medicaid) and nonmedical facilities where SSI recipients reside were originally published in final in the **Federal Register** on Tuesday, January 31, 1978 (43 FR 4016). They implemented the "Keys amendment", section 1616(e) of the Social Security Act established by section 505(d) of Pub. L. 94-566, enacted October 20, 1976.

The purposes of the "Keys amendment" were: (1) To assure development of standards for safe and appropriate residential settings as an alternative to institutional living for SSI recipients; (2) to limit the use of SSI funds for substandard facilities for such persons; and (3) to publicize the standards and enforcement procedures for these facilities as a means of involving the public in monitoring these standards.

The implementing regulations were effective October 1, 1977. As provided in the statute, they required States to: (1) Designate one or more State or local authorities to establish and enforce standards for residential facilities where significant numbers of SSI recipients reside or are likely to reside; (2) make annually available for public review a summary of the standards in the services plan under the former Title XX of the Social Security Act; (3) make available a list of any waivers of such standards and any violations that may have come to the attention of standard-setting authorities; and (4) certify annually to the Secretary Compliance with the "Keys amendment" requirements.

These regulations were redesignated as 45 CFR Part 1397 on August 25, 1980 (45 FR 56728).

Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, amended section 1616(e) of the Social Security Act by deleting reference to Title XX. On March 1, 1983, we published a final rule with a 60 day comment period to reflect this statutory change and to specify how States must now comply with these requirements. We specified that in addition to making the summaries of the standards available for public review, a State must send the summaries of standards and of the enforcement procedures to the Assistant Secretary for Human Development Services. We also required States to designate a State Official to assist in the implementation of the requirements of the statute and Part 1397. Some editorial changes were made for clarity.

Reporting and Recordkeeping Requirements

Sections 1397.10 and 1397.20 were submitted to the Office of Management and Budget (OMB) because they contained reporting and recordkeeping requirements for which OMB approval had not previously been requested. We have now received OMB clearance for these requirements. The clearance number is 0980-0154 and is effective until April 30, 1986. The summaries of standards and enforcement procedures are due the first quarter of FY 1984 in accordance with 45 CFR 1397.10(f).

Response to Comments and Changes Made in This Final Rule

Nine letters were received from State and local governments and public interest groups constituting 30 comments.

In general, commenters approved of the changes made. Commenters from State agencies with more than one standard setting authority agreed that the designation of an official to assist in the implementation of these requirements would provide more accountability as well as more coordination. One State with a single standard setting authority suggested that the head of such authority should or could also be the designated official. We believe that § 1397.10(g) already permits this type of arrangement. There were no objections to the change to require summaries of standards and enforcement procedures to be sent to the Assistant Secretary for Human Development Services.

We have made one change in this rule in response to comments. Several commenters objected to the requirement that a single copy of the standards and other specified materials be made available without charge. They stated that this provision was both unreasonable and contrary to some State laws that currently require the charging of fees. We agree and have amended § 1397.10(d)(2) to allow States the option of charging fees for these materials.

Other substantive comments and our responses are as follows:

Comment

Most of the commenters objected, as they had when the regulations were first published in 1978, to the requirement that the SSI recipient rather than the facility be penalized for living in a facility with known violations of the standards. The penalty reduces the SSI recipient's benefit to the extent, if any, that a State supplementary benefit or other payment is made for medial or remedical care provided by the facility.

Response

The penalty is a statutory requirement and without statutory change no alternative appears to be feasible.

Comment

Some commenters seemed to think the regulations were being published for the first time and recommended that we define or allow the States to define terms such as "significant number" of SSI recipients (§ 1397.1); "needs" of SSI recipients (§ 1397.20(a)(1)); "periodic inspection" (§ 1397.20(b)(1)(i)); and type

of "technical assistance" to be provided (§ 1397.20(b)(1)(ii)).

Response

We did not define these terms in previous regulations and do not believe it is appropriate to define them now. We believe States which have implementing responsibility for these statutory and regulatory requirements are in the best position to determine their definition.

Comment

Two commenters interpreted the regulations at § 1397.10(c) to require full annual publication of the complete standards in local newspapers.

Response

The statute in section 1616(e)(2) requires a State to "annually make available for public review" (not "annual publication") summaries of standards. A State may satisfy this requirement in a variety of ways, e.g., (1) publish a notice in a newspaper that informs the public when and where they may obtain summaries for review; (2) use T.V., radio or other media to announce the availability of the summaries; (3) publish the full summaries in local newspapers; and (4) include the summaries in documents that receive widespread public review such as the social services block grant pre-expenditure report or other State reports on human resources programs.

Comment

Two State health care agencies recommended that the penalty should not be levied unless the facility's violation is serious and could adversely affect the health and safety of the residents. In addition, one commenter asked that the language of § 1397.20(d)(2) be changed to read: "The list of facilities found in violation of a standard which adversely affects the health and safety of the residents".

Response

The statute requires that the penalty go into effect when a facility does not meet the standards, not when minor violations occur. It gives the State the responsibility to establish and enforce standards and contains no qualifications regarding major or minor violations. The Department's policy as stated in the Preamble to the Final Rule with comment period, published in the **Federal Register** March 1, 1983 (48 FR 8453), is to facilitate this State responsibility.

Impact Analysis

Executive Order 12291

The Department has determined that this rule will not result in an annual economic impact of $100 million or more nor will it meet any of the other criteria for a major rule under Executive Order 12291. The rule primarily implements statutory requirements.

Regulatory Flexibility Act of 1980

This rule specifies responsibilities that must be carried out by States in implementing the Keys amendment. States are not considered small entities under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). Although the facilities subject to the Keys amendment are small entities under the Act, this rule makes no change in the standards they must meet. Standards for facilities are established by State, not Federal regulation. The Secretary, therefore, certifies that the rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 1397

Grants programs, Social programs, Health facilities, Supplemental Security Income (SSI).

Approved: August 26, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: October 4, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Accordingly, for the reasons set forth in the Preamble, 45 CFR Part 1397 is amended as follows:

1. The authority citation for Part 1397 reads as follows:

Authority: Sections 1102 and 1616(e) of the Social Security Act (42 U.S.C. 1302 and 1382(e)).

2. The title of Part 1397 is corrected as follows:

Part 1397—Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside

3. Section 1397.1 is corrected to add a period at the end of the first sentence as follows:

§ 1397.1 Scope.

This part requires States to create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which, as determined by the State, a significant number of recipients of Supplemental Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments by the Social Security Administration. The reduction will be in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility.

4. The Office of Management and Budget control number is added at the end of § 1397.10 as follows:

§ 1397.10 Responsibilities of States.

* * * * *

(Approved by the Office of Management and Budget under control number 0960-0154)

5. Section 1397.20 is amended by adding the words "with or" in paragraph (d)(2) and by adding the OMB control number at the end of the section as follows:

§ 1397.20 Responsibilities of designated standard-setting authorities.

* * * * *

(d) *Maintain and make records available—*

* * * * *

(2) *Availability of records to the public.* Each authority shall make available with or without charge to interested individuals a single copy of:

(i) A complete set of standards for each type of facility;

(ii) The procedures used in the State to insure the enforcement of standards;

(iii) The list of facilities (name and address) that have been granted waivers of each standard, including the justification for the waiver; and

(iv) The list of facilities (name and address) found in violation of a standard, including the details of each violation.

* * * * *

(Approved by the Office of Management and Budget under control number 0960-0154)

6. Part 1397, including the changes in paragraphs 1-5 above, is revised to read:

PART 1397—STANDARD SETTING REQUIREMENTS FOR MEDICAL AND NONMEDICAL FACILITIES WHERE SSI RECIPIENTS RESIDE

Sec.

1397.1 Scope.
1397.5 Definitions.
1397.10 Responsibilities of States.
1397.20 Responsibilities of designated standard-setting authorities.

Authority: Sections 1102 and 1616(e) of the Social Security Act (42 U.S.C. 1302 and 1382(e)).

§ 1397.1 Scope.

This part requires States to create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which, as determined by the State, a significant number of recipients of Supplemental Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments by the Social Security Administration. The reduction will be in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility.

§ 1397.5 Definitions.

For purposes of this part:

(a) Any category of institutions, foster homes, and group living arrangements means residential facilities which: (1) Provide both room and board and continuous protective oversight to the residents; and (2) Are non-medical or medical facilities of any size (other than those certified for participation in the Medicaid or Medicare programs) which are publicly or privately operated on a nonprofit or for-profit basis.

(b) Medical or remedial care means care directed toward the correction or amelioration of a medical condition which has been diagnosed as such by a licensed medical practitioner operating within the scope of medical practice as defined by State law, and the care is provided by or under the direct supervision of a medical practitioner or other health professional licensed by the State or credentialed by the appropriate professional organization.

§ 1397.10 Responsibilities of States.

Each State shall—

(a) Determine the kinds of residential facilities (as defined under § 1397.1) in which a significant number of SSI recipients resides or is likely to reside;

(b) Create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of any standards for the residential facilities identified in accordance with paragraph (a) of this section;

(c) Annually make available for public review a summary of the standards established in accordance with paragraph (b) of this section, including the name and address of each standard-setting authority from which interested individuals may obtain further information about full standards, enforcement procedures, waivers of standards and violations;

(d) Assure that each standard-setting authority complies with the requirements of § 1397.20;

(e) Annually certify to the Assistant Secretary for Human Development Services that the State meets the requirements of this Part. The certification shall be in the form of a factual statement signed by the Chief Executive Officer of the State or his or her designee and submitted within the first quarter of each Federal fiscal year; and

(f) Send a summary of each standard for each kind of facility, and a summary of enforcement procedures to the Assistant Secretary for Human Development Services in the first quarter of the first fiscal year following March 31, 1983. Thereafter, only new or revised summaries of standards or procedures are required. The address for the Assistant Secretary for Human Development Services is 200 Independence Avenue, S.W., Washington, D.C. 20201.

(g) Designate an official to assist in the implementation of the requirements of this Part

(Approved by the Office of Management and Budget under control number 0980-0154)

§ 1397.20 Responsibilities of designated standard-setting authorities.

Each standard-setting authority shall:

(a) *Establish standards.* (1) The standards shall be appropriate to the needs of the SSI recipients residing in the facilities and to the character of the facilities involved. In addition, they shall govern such matters as:

(i) Admission policies (including a continuous needs assessment and referral to appropriate resources);

(ii) Safety;

(iii) Sanitation (cleanliness and hygienic procedures); and

(iv) Protection of civil rights (under the United States Constitution, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other relevant provisions of Federal and State laws).

(2) If a standard-setting authority has standards already in place that cover the subject areas listed in paragraph (a)(1) of this section, the standards meet the requirements of this paragraph.

(3) Under the requirements of this paragraph, the authority may provide for waivers of a standard under specified criteria.

(4) The authority shall notify the public and providers about the need for affected facilities to meet its standard.

(b) *Establish procedures for enforcing the standards.* (1) The enforcement procedures shall include:

(i) Periodic inspection of facilities;

(ii) Provision of technical assistance; and

(iii) Use of a warning system which provides for an opportunity for a deficient facility to comply and for the residents to move out if the facility fails to do so.

(2) The standard-setting authority shall establish specific time periods:

(i) For a deficient facility to carry out a plan approved by the standard-setting authority to correct any violation of a standard which cannot be waived; and

(ii) For the standard-setting authority, if the facility fails to comply, to arrange for informing in writing all residents of the facility (including, where appropriate, the families, guardians, or representative payees of SSI residents) of the standard which the facility does not meet, and of the time period during which residents may relocate if they wish before the authority reports the deficient facility to the Social Security Administration. The standard-setting authority shall also provide all residents with a list of approved facilities and agencies which will help them move if they wish. The purpose is to let the residents know they do not have the protection of the standard, and to give them time and assistance to move if the absence of the standard endangers them or causes a reduction in their SSI benefit.

(c) *Report deficient facilities to the Social Security Administration.* (1) At the conclusion of the relevant time period(s) given a deficient facility to correct violation of a standard or for residents to move out of a facility, as described in paragraph (b)(3) of this section, each designated standard-setting authority shall report to the appropriate Regional Office of the Social Security Administration the name and address of any facility which no longer meets the standards and the effective date of the violation. The purpose is to enable the Social Security Administration to reduce SSI benefits to SSI residents living in a facility in violation of standards, in accordance with the requirements of Section 1616(e) of the Social Security Act.

(2) If and when a deficient facility again meets the standards, the standard-setting authority shall notify the Social Security Administration of the effective date of its approval of the facility.

(d) *Maintain and make records available*—(1) *Maintenance of records.* Each authority shall:

(i) Keep a record of the details of each violation of a standard by a facility; and

(ii) If a standard is waived, maintain a record including the name and address of each facility granted a waiver, the standard waived, and the justification for waiving it.

(2) *Availability of records to the public.* Each authority shall make available with or without charge to interested individuals a single copy of:

(i) A complete set of standards for each type of facility;

(ii) The procedures used in the State to insure the enforcement of standards;

(iii) The list of facilities (name and address) that have been granted waivers of each standard, including the justification for the waiver; and

(iv) The list of facilities (name and address) found in violation of a standard, including the details of each violation.

(3) The authority shall provide the official designated in accordance with § 1397.10(g), a summary of each standard for each kind of facility and enforcement procedures.

(Approved by the Office of Management and Budget under control number 0980–0154)

[FR Doc. 83–31814 Filed 11–29–83; 8:45 am]

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federal register

Wednesday
November 30, 1983

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Fund Fee Collection and Coal Production Reporting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Land Reclamation Fund; Fee Collection and Coal Production Reporting

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing revisions and amendments to 30 CFR Part 870, regarding the Abandoned Mine Land Reclamation Fund, fee collection requirements and coal production reporting procedures. These changes and amendments are proposed to clarify the party responsible for the payment of reclamation fees under Section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and to provide further administrative and enforcement procedures and options for OSM to ensure a more efficient and effective collection effort. The changes propose certain management activities for the collection of reclamation fees and provide a range of compliance activities that include investigations, reports, audits and debt collection and litigation procedures.

DATE:

Written Comments: Accepted until 5:00 p.m. January 23, 1984.

Public Hearings: Held on request only, on January 9, 1984, at 9:00 a.m. (local).

Public Meetings: Scheduled on request only.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–27), Room 5315, 1100 L St., NW., Washington, D.C. 20240, or mail to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–27), Room 5315–L, 1951 Constitution Ave., NW., Washington, D.C. 20240.

Public Hearing: Washington, D.C., Department of the Interior Auditorium, 18th and C Streets, NW.

Public Meetings: OSM offices in Washington, D.C., Denver, Colorado, and Pittsburgh, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401–L, Washington, D.C. 20240, Telephone (202) 343–7944.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures
II. Background
III. Discussion of Proposed Rules
IV. Procedural Matters

I. Public Commenting Procedures

Written Comments

Written comments shall be specific, pertaining only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "ADDRESSES"). Comments received after the time indicated under "dates" or at locations other than the addresses listed above under "ADDRESSES", will not necessarily be considered or included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to testify at the public hearings should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business at least three working days before the date of the hearing. If no one asks to testify at a public hearing at a particular location by that date, the hearing may not be held.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until persons scheduled to speak have been heard. The hearing will end after all persons scheduled to speak and all persons in the audience wishing to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are in the audience at the time all scheduled speakers have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at the OSM office in Denver or Washington by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

II. Background

Title IV of SMCRA establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. The program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal law.

Section 402 of SMCRA provides that "all operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the Fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine or 10 cents per ton, whichever is less." Reclamation fees are to be paid no later than 30 days after the end of each calendar quarter beginning with the first calendar quarter occurring after the date of enactment of SMCRA (August 3, 1977) and ending fifteen years after the date of enactment of SMCRA, unless extended by an Act of Congress.

In October 25, 1978, OSM published regulations implementing the Abandoned Mine Land Reclamation Program, 43 FR 49932. Regulations relating to the amount and collection of reclamation fee were promulgated in 30 CFR Part 837 on December 31, 1977, 42 FR 62713. This Part was redesignated as Part 870, 43 FR 49932 (October 25, 1978). Certain provisions of the Abandoned Mine Land Reclamation Program regulations were revised on June 30, 1982, 47 FR 28574. For a detailed discussion of the components of the fee collection program, refer to the preamble discussion in the AML Regulations published June 30, 1982, 47 FR 28574.

III. Discussion of Proposed Rules

New Section 870.9, Responsible Party

The regulations in Part 870 do not contain a formal designation of the party ultimately responsible for paying reclamation fees. The preamble to the regulations (42 FR 62713, December 13, 1977), however, did address the question of fee payment responsibility in the following manner:

> We believe that Congress intended the burden of fee payment to fall upon the person who stands to benefit directly from the sale, transfer, or use of the coal. This intent will guide the Office in making decisions as to who is liable for the fee. The identification of operators will be made in light of the realities of the business world and will not turn solely on a literal interpretation of the word "removes". * * *

It is anticipated that many of the problems of determining liability for the fee among parties to particular business arrangements will be alleviated as production and supply contracts are negotiated and renegotiated. Contractual agreement for determining liability for the fee may be a helpful guide in determining liability for the fee. * * *

(42 FR 62713)

At that time, OSM anticipated few problems in using the term "contractual arrangements" in making clear-cut determinations as to the person liable for paying reclamation fees. However, there have been problems in making such determinations, resulting in expensive and protracted litigation between OSM and coal companies. Sometimes contracts do clearly delineate responsibility for payment of the reclamation fee, but there are few such clear-cut contractual arrangements. More often, in situations where fee liability is contested, no written contract exists. Even in those cases where there is a contract, it does not ordinarily mention payment of reclamation fees. More often than not, oral "contracts" are alleged by parties who contest fee liability.

In some cases where written contracts do exist, the person who stands to benefit directly from the sale, transfer, or use of the coal has attempted, through contractual agreements, to transfer liability for reclamation fees to other parties. These situations often have resulted in litigation between OSM and coal companies. To solve this problem of uncertain liability, OSM proposes to add a new Section 870.9 to specify the party responsible for reclamation fee payments. This party would be the person or entity which owns the coal under State law after it is severed from any source. This administrative determination parallels the definition of "producer" used by the Internal Revenue Service for collection of the Black Lung Tax.

This new Section would establish that if the mining operation extracting or removing the coal is subject to the provisions of SMCRA, responsibility for the payment of reclamation fees would lie with the person or entity which owns the coal under State law immediately after its removal or extraction. This person or entity would be considered "the operator", as that term is used in Section 402 of SMCRA and elsewhere in 30 CFR Subchapter R of the Secretary's regulations for the Abandoned Mine Land Program. Accordingly, "the operator" or more appropriately stated, "the person responsible for reclamation fee payments" may be the permittee, the person who literally removes the coal, or some other party. The essential determining factor will be whether that person or entity owns the coal under State law immediately after it is severed, extracted or removed. Application of this proposed requirement may be illustrated by the following examples:

Example (1): A, a limited partnership, is the owner of land on which a coal mine is located. A contracts with XYZ Company to extract and deliver the coal for a set price per ton. XYZ Company is an independent contractor and has no ownership interest in the coal mined. Under State law, A is the owner of the coal immediately after severance. After XYZ extracts the coal from the mine, A sells the coal to D, the whom XYZ delivers the coal. A is responsible for the payment of the reclamation fee.

Example (2): A, a limited partnership, is the owner of land on which a coal mine is located. A leases the land to XYZ Company and XYZ Company extracts coal from the mine and sells it. Under State law, XYZ is the owner of the coal immediately after the coal is severed from the ground. XYZ Company must pay the reclamation fee. This is true even though the lease agreement requires XYZ to pay a royalty to *A*.

Example (3): XYZ Company purchases a coal waste refuse pile from *B* and extracts the coal from the waste pile and sells the coal. XYZ must pay the reclamation fee.

Example (4): XYZ Company is a producer of anthracite coal and operates its own cleaning plant. After wet washing the coal, it sells the coal and the silt product. XYZ must pay the reclamation fee on both the coal and the silt product.

Revised 870.15(c), Post Judgment Interest

OSM proposes to retain this Section as in the current rule except that the phrase "* * * or until judgment is rendered by a court of competent jurisdiction in an action at law to compel payment of debts." is proposed to be removed to ensure that all parties understand that OSM reserves the right to collect post judgment interest in all unpaid reclamation fee collection cases.

Revised 870.15(c), Interest Rate Payments

OSM also proposes to add a clarifying provision to § 870.15(c) regarding the accrual of interest on late payments. This new provision provides that interest would accrue on any payment postmarked later than thirty days after the end of the calendar quarter in which the fee was owed. Questions have been raised whether the present ambiguous regulations require that OSM must be in actual receipt of the payment by the 30th day or whether the payment must have been postmarked by this time in order to avoid the interest charges; the proposed change provides that either is sufficient.

New Section 870.15(e), Fee Compliance Actions

OSM proposes to add a new Subsection (e) which would detail new more stringent enforcement and collection efforts against responsible persons for failure to pay overdue fees, including interest on late payments or underpayments, failure to maintain adequate records, failure to file required reports or failure to provide access to records by an operator subject to the requirements of SMCRA. These enforcement and collection options would include: initiation of litigation; reporting to the Internal Revenue Service; State agencies responsible for taxation and credit bureaus; and referrals to collection agencies. OSM could choose one or more of these specific alternatives to encourage compliance with the operator's statutory responsibilities under Section 402 of SMCRA.

New Section 870.15(f), Permits Affected By Fee Debts

OSM is proposing a new § 870.15(f) requiring State Regulatory Authorities to suspend a permit for a specific mining operation if reclamation fees on the coal therefrom are due and owing the Federal Government for more than one month or the required forms have not been filed. That is, if the payment is delinquent on the last day of the month following the month in which the reclamation fee was due, the Regulatory Authority would be required to initiate actions to suspend the permit for the mining operation in question. For example, the fee for the first calendar quarter in 1983 was due on April 30, 1983. If the fee remained unpaid on May 31, 1983, the Regulatory Authority would have been required by this proposal to initiate suspension proceedings for that mining operation on June 1, 1883. Similarly, if a mine report form for the last quarter of 1983 covering production or non-production was not filed, suspension proceedings for that mining operation would also have to have been commenced.

State Regulatory Authorities already have the responsibility under 30 CFR 786.19(h) to deny applications for new permits or applications for renewal of permits for failure to pay reclamation fees. There was, however, on specific enforcement action that the Regulatory Authority could or was required to take against an existing operation which

refuses to pay its reclamation fees. This new regulation would correct the problem by providing State Regulatory Authorities the power and duty to take quick decisive action when fee payments are owed.

OSM believes that the possibility of suspension will enhance operator compliance with the statutory requirement of Section 402 of SMCRA and avoid the delays and added collection expenses that weakened the Government's collection efforts. Authority for the proposed action is found in Sections 412(a) (the Secretary of the State has the authority to do all things necessary or expedient to implement and administer the provisions to Title IV) and 510 of SMCRA (permits should not be issued unless all requirements of the Act have been met).

New Section 870.15(g), Penalty on Fee Debts

In accordance with the Debt Collection Act of 1982 (Pub. L. 97–365), this new subsection would impose a six-percent per annum penalty on all fee debts owed under Section 402 of SMCRA as soon as such debts are 91 days overdue. This penalty would be in addition to the interest which begins to accrue at the rate set by the U.S. Treasury, on the 31st day following the end of the calendar quarter for which the fee is due. A penalty of six percent or less is mandated by Section 3(e)(2)(b) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952), as amended by the Debt Collection Act of 1982, Section 11.

New Section 870.15(h), Processing and Handling Charges

OSM is proposing a new § 870.15(h) assesssing charges to cover the cost of processing and handling delinquent claims. Authority for this action is found in Section 11 of the Debt Collection Act of 1982, Pub. L. 97–365. The processing would include referrals to the Solicitor's Office, Department of the Interior, as well as private collection agencies. The debtor would be notified in the first demand letter (bill) of the potential penalty and processing charge that would be incurred if the debt remains unpaid.

OSM is proposing to make the amount of the processing charge approximately what OSM must spend to collect overdue fees. The amount of the processing charge would be determined by one of the following methods: (1) If a fee debt is referred to a collection agency, OSM is proposing that the debtor would pay the amount the collection agency charges; (2) if OSM processes and handles a delinquent fee without using a debt collection agency, OSM proposes that the debtor would pay an amount equivalent to that charged by collection agencies for the same or similar services; and (3) in the event a debt is referred to the Solicitor, Department of the Interior, to bring suit for collection of the fee, OSM is proposing a flat processing charge. This processing charge would be based on the then current estimated cost to prepare a debt case for litigation. Though processing costs could fall short of or exceed this average cost in some situations, it would be an administrative burden to cost out each case. Thus, OSM proposes to charge a flat "average" fee for each case of this type, which would reflect expenses incurred by OSM, the Solicitor and any other person (such as a collection agency or asset location company responsible for aspects of collection on behalf of OSM). OSM will also charge a fee for internal administrative collection costs in all cases. Should a debt subsequently proceed to litigation, OSM is proposing to change a flat processing charge based on the estimated cost of litigating each of these debt cases, which would include the aforementioned cost for preparing a debt case for litigation.

All penalties and processing and handling charges imposed and collected on fee debts will go into the Secretary's share of the Abandoned Mine Land Reclamation Fund to reimburse OSM for the cost of collecting fees owed.

Revised Section 870.16(a), Access to Mines, Preparation Plants and Tipples

OSM is proposing to clarify § 870.16(a) so that all surface mining operators subject to the provisions of SMCRA are on notice that they will be required to keep existing records of coal produced, used, bought or sold. The current rule for recordkeeping refers to "operators" and this caused some misunderstanding concerning its scope, particularly its applicability to operators of support facilities. In addition, the current rule implies but does not specifically require that operators keep existing records of purchased coal. By clarifying recordkeeping requirements for all mining operations subject to the jurisdiction of SMCRA, OSM would be able to check production data and thereby lessen the underreporting or nonreporting of production data.

Revised Section 870.16(a)(4), Certification of BTU Value

OSM proposes to revise § 870.16(a)(4) slightly by adding the requirement that an independent laboratory certify the BTU value of a ton of in situ coal at least semi-annually. OSM believes that this frequency requirement is necessary to monitor any changes in the coal seam. The present rule does not have any frequency determination.

Revised Section 870.16(b), Access to Mines, Preparation Plants and Tipples

OSM proposes to revise § 870.16(b) to clarify that OSM Fee Compliance Officers have the authority to review records of all surface mining operations, including preparation plants and tipples, at or near the minesite. Authority for such actions would be derived from Section 412(a) and 701(28) of SMCRA.

The purpose of this revision would be to provide OSM's Fee Compliance Officers (FCO's) with the means to determine the extent to which operations covered by the Act are discharging their statutory responsibilities to report production figures accurately and pay reclamation fees due on all production for each calender quarter. The existing regulations do not provide a means of effectively monitoring all mining operations to ensure compliance with the statutory requirements for reporting production figures accurately and paying full reclamation fees on production for each quarter. Both the criminal penalty provision in Subsection 402(d) of the Act, 30 U.S.C. 1232(d), and the provision in Subsection 402(e) allowing recovery of reclamation fees through a civil debt collection action, would become operative after OSM has determined which operators of mines or tipples have underreported production or underpaid fees.

OSM would be better able to identify those operators who misreport coal production figures if FCO's are granted access to information on sales of coal made by operators to tipple owners. OSM can, in many situations, make better use of its auditing personnel if auditors concentrate on tipples and plants through which coal from several operators moves. Such audits are especially helpful in checking for "wildcatters" and those producers who underreport tonnage of production in order to avoid reclamation fee liability.

Revised Section 870.16(c), Substantiating Records

OSM proposes to revise § 870.16(c) to require all operators of surface mining operations subject to the provisions of SMCRA to make their production and sales records available to OSM's Fee Compliance Officers. This revision would make this subsection consistent with the revisions previously discussed for Section 870.16(b).

Revised Section 870.16(d), Record Maintenance

OSM proposes to revise § 870.16(d) to clearly state that all operators of surface mining operations must maintain their production and sales records for at least six years from the date the fees were due or paid. In addition, this Section would limit the time span for OSM audits to six years assuming that production was reported accurately and fees paid accordingly. The existing rule is ambiguous since it refers to the term "operator" and it does not have a time limit for OSM audits. The proposed time period would not affect cases of fraud or failure to report; in such cases there would be no time limit on the Federal Government's attempts to audit. The six-year period for record maintenance is not to be construed as a statute of limitations for the commencement of an action for recovery of delinquent reclamation fees pursuant to Section 402 of the Act, 30 U.S.C. 1232. Absent Government consent through Congressional action, no period of limitations exists. See, *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132 (1938).

New Section 870.16(e), Estimated Fee

This new subsection proposes a method of assessing reclamation fees in cases where operators fail to maintain adequate records or fail to make such records available for audit purposes. Currently, OSM has no satisfactory method of determining fee liability whenever an operator fails to keep adequate records or refuses access to such records. OSM's only recourse is civil litigation.

This proposed rule would implement a fair method of establishing a fee debt, that would be incurred immediately. In the absense of records, OSM's estimate of fees owed on coal produced would be based upon such factors as mining method used, type of coal produced, and geographical location. Interest would accrue and other charges might be added in the event of non-payment. OSM would add 20% to the estimate of fees to enhance the probability that all rightful fee liability is captured. This method of determining reclamation fee liability is a variation of the penalty assessment used by Kentucky when the State must estimate natural resource tax liability. Kentucky uses any information in its possession, assesses the tax at no more than twice the amount estimated to be due and adds a penalty of ten percent (10%) of the amount of the tax assessed. Rather than double the amount of the estimate, OSM would add 20% as a margin of error.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule would not have a significant economic effect on a substantial number of small entities and, therefore, does not require a Regulatory Flexibility analysis under Pub. L. 96-354. The reasons underlying these determinations are as follows:

The proposed revisions to Part 870 of the Abandoned Mine Land Reclamation Fund regulations would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

National Environmental Policy Act

OSM has been granted a categorical exclusion from the procedures of the National Environmental Policy Act for the subject of reclamation fees imposed by Pub. L. 95-87 (46 FR 7487—January 23, 1981).

Paperwork Reduction Act of 1980

The information collection requirements contained in 870.15 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0063.

List of Subjects in 30 CFR Part 870

Coal mining, Reporting requirements, Surface mining, Underground mining.

Dated: October 6, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

For the foregoing reasons, it is proposed to amend 30 CFR Part 870 as follows:

PART 870—ABANDONED MINE LAND RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. 30 CFR 870 is amended by adding a new § 870.9, as follows:

§ 870.9 Fee responsibility.

For purposes of reclamation fee liability, if the mining operation is subject to the requirements of the Act, the person or entity in whom is vested the ownership of the coal under State law immediately after the coal is severed, without regard to the existence of any contractual agreements for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties, is responsible for paying the reclamation fees owed under Section 402 of the Act, and is referred to in this Part as the "responsible party".

§ 870.15 [Amended]

2. 30 CFR 870.15 is amended by revision paragraph (c) and adding new paragraph (e), (f), (g), and (h) as follows:

* * * * *

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal service in the Notices section of the **Federal Register.** Interest shall begin to accrue on the 31st day following the end of the calendar quarter and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All responsible parties, including those with zero production, must submit a completed Coal Production and Reclamation Fee Report (Form OSM-1) as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter in which the fee was owed will be subject to interest.

* * * * *

(e) Failure to pay overdue fees, including interest on late payments or underpayments, failure to maintain adequate records, or failure to provide access to records of a mining operation under the jurisdiction of SMCRA will result in one or more of the following fee compliance proceedings: initiation of litigation, reporting to the Internal Revenue Service, reporting to State agencies responsible for taxation, reporting to credit bureaus, and referral to collection agencies.

(f) the regulatory authority shall initiate proceedings to suspend the permit of any mining operation where reclamation fees on the coal therefrom

are overdue, the responsible party is delinquent in making overdue fee payments on the coal thereform, or the responsible party therefor has failed to file the required mine report forms. These actions shall be initiated when the responsible party is delinquent in fee payments on the last day of the mount following the month in which the fee was due.

(g) When a reclamation fee debt is over 91 days overdue, a 6 percent per annum penalty shall begin to accrue on the amount owed for fees and will run until the date of payment. This penalty is in addition to the interest described in paragraph (c) of this section.

(h) For all delinquent fee debts the debtor will be required to pay a processing and handling charge which shall be determined as follows:

(1) For debts referred to a collection agency, the processing and handling charge will be that amount charged to OSM by the collection agency.

(2) For debts processed and handled by OSM, the charge will be a standard amount set annually by OSM based upon similar charges by collection agencies for debt collection.

(3) For debts referred to the Solicitor, Department of the Interior, but paid prior to litigation, the processing charge will be the estimated average cost to prepare the debt case for litigation as of the time of payment.

(4) For debts referred to the Solicitor, Department of the Interior, and litigated, the processing charge will be based on the estimated average cost to prepare and litigate a debt case as of the time of payment.

(5) A processing charge will also be added to cover all other internal administrative expenses associated with collection, including billing, recording payments, and follow up actions.

(6) No interest accrues on any processing fee.

* * * * *

§ 870.16 [Amended]

3. 30 CFR 870.16 is amended by revising paragraph (a), (b), (c), and (d) and adding new paragraph (e) as follows:

(a) The operator of a surface coal mining operation as defined under Section 701(28) of the Act shall maintain, on a current basis, records that contain at least the following information and data:

(1) Tons of coal produced, bought, sold or transferred, amount received per ton, name of party to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold for fee computation purposes under 870.12 of this Part.

(4) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount received for gas sold, transferred, or used.

(b) OSM fee compliance officers shall have access to records of any surface coal mining operation as defined under Section 701(28) of the Act for the purpose of determining compliance of that or any other such operation with the regulations of this part.

(c) The operator of a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by OSM fee compliance officers. If the fee is paid at the maximum rate, the fee compliance officers shall not copy information relative to price. All copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 552 (b)).

(d) The operator of a surface coal mining operation shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later. Surface coal mining operations will not be subject to audit beyond 6 years after the fee has been paid, provided that production was reported and fees were paid accordingly. There is no time limit for audits where fraud is indicated.

(e) If an operator of a surface coal mining operation fails to maintain or make available the records as required in this Section, OSM shall make an estimate of fee liability under this part through use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due, plus a 20% upward adjustment for possible error.

(Pub. L. 95–87. 30 U.S.C. 1201 *et seq.*)

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Part V

Legal Services Corporation

Procedures Governing Denial of Refunding; Eligibility; Subgrants, Fees and Dues; Final Rules

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 abd 1625

Procedures Governing Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule separates the Corporation's denial of refunding regulations from its termination regulations and revises the denial of refunding regulations. This action is needed because denial of refunding proceedings are excessively costly and time-consuming. This rule simplifies and expedites denial of refunding proceedings and broadens the grounds for denial of refunding to the extent consonant with the statutory requirement for a timely, full and fair hearing for recipients.

EFFECTIVE DATE: This regulation is effective December 30, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Deputy General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION:

Introduction

Both the proposed regulations (August 15, 1983, 48 FR 36845) and the final regulations divided the former 45 CFR Part 1606, which governed both termination and denial of refunding, into two regulations: 45 CFR Part 1606, Termination, and 45 CFR Part 1625, Denial of Refunding. The provisions of 45 CFR Part 1606 are unchanged except for technical amendments deleting all references to denial of refunding. Consequently, this regulation will not be further discussed in this preamble. The provisions of 45 CFR Part 1625 have undergone substantive amendment in both the proposed and the final regulation.

The Corporation received considerable comment by the September 14, 1983 deadline for receipt of comments. The opposition to the proposed changes concentrated on §§ 1625.2, 1625.3, 1625.8, and 1625.9, which contained the major changes. The final regulation retains these changes with a few modifications in response to comments. The four sections listed above will be discussed section-by-section below, and other minor changes will be discussed under the heading of "other issues." Before reaching this section-by-section analysis, some general issues raised by comments will be addressed.

General Issues

A number of comments advocated delaying any action on this regulation until there is a confirmed Legal Services Corporation Board of Directors. However, the present Board of recess appointees has the same fiduciary responsibilities as any other corporate board and cannot abdicate them. Furthermore, the Board cannot postpone decisions on the basis of the prospect of a confirmed Board at some uncertain time in the future without paralyzing the Corporation for an indefinite period. The issues surrounding the regulation have been extensively considered, and it is the conclusion of the Corporation that it is in the best interest of the Legal Services Program to make a decision on this regulation.

It was also argued that action should be postponed awaiting action on amendments to section 1011 of the Legal Services Corporation Act in the Corporation's pending reauthorization. Again, the Corporation would be paralyzed if it were to await the passage of proposed amendments to section 1011 of the Act at a future time uncertain.

The separation of denial of refunding and termination procedures was questioned on the basis that section 1011 of the Act provides the same standard of "timely, full and fair hearing" for both. The Corporation agrees that this is the minimum standard for both termination and denial of refunding, but does not agree that differences in procedure are proscribed, provided this minimum standard is met. Furthermore, by the nature of the two proceedings there must be some differences between them. Indeed, even the current combined regulation contains differences in two crucial sections, the definitions of termination and of denial of refunding and the grounds for termination and for denial of refunding.

The final regulation retains all the basic constituents of a full hearing, although it compresses some of the time limits and reduces some of the prehearing and posthearing procedures, as discussed below. Not everthing in the current regulation was required by the simple statutory language of section 1011 of the Act. Consequently, the careful streamlining of procedures in the final regulation can eliminate some procedural steps without denying a full and fair hearing.

Section 1625.2 Definitions.

The proposed § 1625.2 made, and the final regulation retains, two significant changes from the corresponding definitions in current § 1606.2. The first is that it simplifies the definition to cover only a reduction of more than 10 percent in a recipient's annualized funding level; it eliminates reference to a reduction of more than $20,000 and to all of the language of the corresponding § 1606.2(a)(3) concerning the addition of a new term or condition not generally applicable to all recipients of the same class. The second change is the addition of an exception to the definition for a reduction of funding "by the uniform application of a statistical formula among the members of the same class of recipients." The final regulation makes one technical change from the proposed regulation, substituting the words, "the same class" for the words "a class" or "the class" for the sake of clarity.

Comments reflected strong opposition to this section, focusing on the first change. Both the right of the Corporation to define denial of refunding as a more than ten percent reduction in annualized funding and the desirability of the change were questioned. As for the legality of the change, the Corporation considers it to be clear. The words of section 1011, "* * * an application for denial of refunding shall not be denied * * *", have no additional definition in the Act. Virtually the same language, "* * * nor shall an application for refunding under section 221, 222, or 312 be denied * * *", appeared in section 604(2) of the Economic Opportunity Act of 1964, as amended, and was taken from that statute in 1974 to form part of section 1011 of the Act when Legal Services Corporation was split off from the Office of Economic Opportunity and established as an independent corporation. At that time, and for seven years previous thereto, the Office of Economic Opportunity interpreted denial of refunding as a reduction of at least 20 percent in a recipient's funding. Thus, as is also evident from the commonsense meaning of the words denial of refunding, it is clear that a reduction of 10 percent or less in a recipient's funding was not considered by Congress to be denial of refunding within the meaning of section 1011 as passed in 1974.

As for the desirability of this change, its purpose is to set one simple standard applying equally to all recipients for determining what constitutes a denial of refunding. The numerical figure of $20,000 had no evident logical basis and was completely outdated by inflation and the growth of the Corporation's funding since 1975. As a result, this figure applied to most recipients and the basic 10 percent standard applied only to the smaller recipients. Furthermore, the numercial standard made an unfair

and unreasonable distinction between large and small recipients.

The deletion of the provision concerning attachment of a special condition to a recipient's grant will have little effect, since the Corporation has found no record of this provision being invoked in any denial of refunding proceeding under 45 CFR 1606. Furthermore, the attachment of a special condition to a recipient's grant is a standard management tool and can often avoid the necessity to proceed to deny refunding to a recipient at a later date. If the Corporation could be required to initiate such a lengthy and expensive procedure as a denial of refunding hearing to place a special condition on one recipient's grant, this management tool would not be usable.

The second change attracted far less comment, although a few comments questioned the desirability of allowing a reduction of more than 10 percent in funding in any circumstances without a hearing. The logic of exempting the uniform application of a statistical formula from the hearing requirement is that, like a uniform reduction in funding caused by a reduction in appropriations, it is not either aimed at or responsive to the circumstances of any particular recipient. Thus, the purpose of requiring a hearing, which is to establish whether the recipient's conduct justifies a denial of refunding, cannot be served in the case of the uniform application of a statistical formula, and a hearing would be an empty and expensive formality.

Section 1625.3 Grounds for Denial of Refunding—New Paragraph (d).

The major difference between current section 1606.3 and the proposed § 1625.3 is the addition of a new section, § 1625.3(d), allowing denial of refunding when "the Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area." Many comments criticized this change on policy and procedural grounds. In particular, it was claimed that the new standard denies due process, owing to the vagueness combined with the reversal of the burden of proof in § 1625.9. The commentators maintain it would force a recipient to establish that the Corporation did not have a substantial basis for concluding that another organization could better serve eligible clients, while the recipient would be unable to compel this other organization to produce relevant witnesses and/or documents.

Although the Corporation did not agree with the general contentions of the commentators, it did reexamine the relationship between §§ 1625.3(d) and 1625.9 and concluded that the recipient should be assured of the ability to examine witnesses and documents from the proposed new recipient organization. In response to this problem, the final regulation was amended by adding a new sentence to another section, § 1625.7(c), requiring the proposed new recipient of funding to produce any such witnesses and documents, subject to the sanctions in §1625.8(f) (which is identical to current § 1606.8(f)). This section allows the presiding officer to make a finding adverse to any party refusing to produce witnesses or documents.

Issues concerning the change in the burden of proof will be considered in the discussion of §1625.9 below. As for the issue of the vagueness of the standard of "better serve eligible clients in the recipient's service area", the Corporation submits that it is as concrete as the standard of current § 1606.3(c) concerning failure to provide "economical and effective legal assistance." A decision to deny refunding, unlike a decision to terminate an existing grant, need not be based on a specific violation, but may reasonably be a broad, programmatic decision. Even if a recipient is not clearly failing to provide "economical and effective legal assistance," the Corporation should have the right to fund another organization so that the Corporation may carry out its statutory duty under section 1007(a)(3) of the Act to "insure that grants and contracts are made so as to provide the *most* economical and effective delivery of legal assistance to persons in both urban and rural areas;" (emphasis supplied).

The Corporation also considers it fair and wise to insure that it has the programmatic authority to fund the best recipients. The Corporation does not accept the notion that Congress intended in section 1011 of the Act to establish a presumption that all existing recipients be perpetually refunded. What Congress did mandate, and what this final regulation does provide, is an opportunity for a timely, full and fair hearing before an independent hearing examiner. After such a hearing, this independent hearing examiner will determine whether the Corporation has a substantial basis for changing recipients.

Section 1625.3 Grounds for Denial of Refunding—Other Changes.

In both the proposed and final regulation, § 1625.3(b) is amended so that a recipient is no longer entitled to notice of and opportunity to correct a specific violation prior to commencement of a denial of refunding proceeding. For proceedings under the more general criteria of § 1625.3(c) a recipient is still entitled to such notice. This change also received considerable negative comment on the basis that a recipient should be entitled to a second chance, and that some recipients may be defunded on minor, technical, or unclear violations.

The Corporation does not consider defunding on such violations to be possible, as discussed below under discussion of the meaning of a "significant" violation. The Corporation maintains that a recipient that has committed such a significant violation should not be entitled to a second chance as a matter of right. When denial of refunding is seriously considered, there is either a long history of violations or a truly major violation. Recipients are organizations staffed by attorneys who should be able to avoid such serious or repeated violations. Furthermore, the Corporation faces a lengthy, expensive and uncertain procedure, averaging six to nine months and $100,000 in total cost, exclusive of staff time. The Corporation will not attempt to convince an independent hearing examiner of the property of denial of refunding for specific violations and undergo such expense unless it has a strong case.

This discussion of the types of violation that will lead the Corportion to initiate a denial of refunding proceeding leads to the other change made in both §§ 1625.3(b) and 1625.3(c). Both the proposed and final regulation substitute the word "significant" for "substantial" as the standard for a violation sufficiently serious to warrant denial of refunding. This term is intended to continue to exclude minor, technical, or unclear violations, while counteracting the assumption which has come to surround the term "substantial" that a recipient has to be a complete failure before denial of refunding is justified. It is not intended, as one comment feared, to allow denial of refunding when a recipient in good faith misinterprets a complex, new regulation, such as 45 CFR Part 1626 concerning Restrictions of Assistance to Aliens. In such an instance, the Corporation would not have a case for establishing a significant violation, unless the recipient has been informed that its interpretation and resulting practice were in violation of the regulation and allowed an opportunity to correct the violation. However, in a clear case, such as a recipient assisting a partisan political campaign, there is no justification for an automatic second chance.

There is one other change in § 1625.3(b) which was added in the final regulation. It is the addition of "instruction" to the list of Corporation issuances, the violation of which may result in denial of refunding. This addition makes violation of any official Corporation issuance published in the **Federal Register** pursuant to section 1008(e) of the Act a possible ground for denial of refunding. As some current Corporation Instructions are quite significant, the Corporation considers this to be a logical and desirable addition to § 1625.3(b).

Section 1625.8 Conduct of the Hearing.

The major issue raised by comments on this section of the proposed regulation was the elimination of intervenors, as provided for in the corresponding § 1606.10(c). This change does not reduce the procedural rights of the recipient in any way and is consistent with the Corporation's objective of simplifying and expediting the hearing process. The strongest objection to the elimination of intervenors was that client groups could no longer participate. However, it is likely that either the recipient or the Corporation will find it in its interest to include such client input in its case. The inclusion of a third party in such an administrative proceeding is a major cause of increased delay and expense, and the Corporation believes that most of the testimony and/or arguments offered will be duplicative of testimony and/or arguments in the case put on by either the Corporation or the recipient. Thus any benefit gained by inclusion of intervenors is more than counterbalanced by the additional delay and expense resulting therefrom. Consequently, provisions for intervenors is eliminated from the final regulation.

Proposed § 1625.3(c) was criticized for the omission of the word "full" in characterizing the hearing. In response to these comments, the statutory language "full and fair" has been restored in the final regulation; similarly, it has been restored where it had been dropped from § 1625.1.

Section 1625.8(h)(2) was added to the proposed regulation, and has been retained in the final regulation; it bars challenge to the validity of "rules, regulations, guidelines, and instructions duly published under section 1008(e) of the Act." Considerable comment was received opposing this change; however, the Corporation considers the case for this change to be very clear. The presiding officer is appointed by the Corporation President, who is appointed by the Board of Directors of the Corporation. The Board has the statutory authority to adopt regulations, pursuant to section 1008(e) of the Act. Consequently, there can be no justification for the presiding officer (or even the President who makes the final decision) to rule on the validity of such regulations. Only a court has the authority to inquire into the validity thereof.

Section 1625.9 Burden of Proof.

This section leaves the burden of proof on specific factual issues with the Corporation, as in the corresponding 45 CFR 1606.11; however, it transfers the overall burden of proof from the Corporation to the recipient. This section is retained in the final regulation. Comments strongly opposed this transfer of the burden of proof. Many comments were based on the concept that recipients have a presumptive right to refunding; as discussed above, the statute does not so provide. As also noted above, the Corporation has amended § 1625.7(c) to insure that a recipient facing a hearing under § 1625.3(d) has the procedural ability to discover the evidence needed to carry this burden against a proposed new recipient.

Many commentators claim that this reversal of the burden of proof denies recipients their due process rights under section 1011 of the Act, especially in proceedings under § 1625.3(d). Their contention is that the procedural protections are inadequate because of the difficulty of establishing that the Corporation lacks a substantial basis for concluding that another recipient "could better serve clients in the recipient's service area." As discussed above, this determination is based on the standard of "economical and effective delivery of legal assistance" in section 1007(a)(3) of the Act. Such programmatic issues must be decided by any grant-making agency. Significantly, the appropriations bill for the Corporation recently passed by the Congress places the burden on the recipient "to show cause" why it should be refunded.

The hearing will develop as a comparison between the recipient's record and the record or potential of the proposed alternative recipient. The Corporation maintains that Congress intended to require procedural safeguards, including the independent presiding officer, but did not intend to preclude a change of recipients, based on broad, programmatic grounds. The recipient is not entitled to a presumption of refunding, absent specific misconduct or complete failure to deliver economical and efficient legal services; there is nothing in section 1011 stating or implying that the Corporation cannot switch funding to a better recipient.

Other Issues

The proposed regulation shortened most of the time limits in the regulation, consistent with its purpose of expediting the hearing procedures. Two of these time limits evoked significant comment. In § 1625.11, the reduction of the time limit for appeal of an adverse decision to the President from 10 to 5 days was criticized as too short and, upon reconsideration, the Corporation agrees and this time limit is restored to 10 days in the final regulation. In § 1625.6(b), the five day limit for challenging the impartiality of the hearing officer was also questioned; this limit is unchanged from that in corresponding § 1606.8(b), and it is retained.

Section 1606.6 requires an informal conference with the Corporation upon request by the recipient prior to the appointment of a presiding officer. This section was not included in the proposed regulation. Some comments advocated its restoration; however, the Corporation has decided that it should not be restored. It is to be noted that this is not the prehearing conference which is provided for in § 1625.7. In 45 CFR Part 1606, there are two conferences, an informal conference before appointment of a presiding officer and a prehearing conference afterwards. Elimination of this multiplicity of steps is one of the main purposes of this revision of denial of refunding procedures. Should both parties decide they would find such an informal conference useful, there is nothing in this regulation forbidding it, but it is eliminated as a required procedural step.

The proposed regulation made no change in § 1625.13, but, in response to comments, the final regulation removes the cap on allowable compensation to recipient's counsel. The cap was transferred to § 1625.14, so a recipient that prevails may be reimbursed for attorney's fees up to the hourly equivalent of the rate of Level V of the executive schedule as set in 5 U.S.C. 5316.

There was some criticism of the language of § 1625.14 which provides for reimbursement only when the hearing officer finds the Corporation's position to have been "substantially without merit." This language is designed to require the Corporation to pay the recipient's costs if the Corporation should not have commenced the denial of refunding proceeding, but to leave each party to pay its own costs if it was a close issue. It is quite common language to govern award of costs and

fees. The Corporation does not consider the strict liability reimbursement standard previously in effect either to be required by law or to be good policy. Consequently this language is retained in the final regulation.

List of Subjects in 45 CFR Parts 1606 and 1625

Administrative practice and procedure, Legal services.

For the reasons set out above, 45 CFR Part 1606 is amended as follows:

PART 1606—[AMENDED]

1. Part 1606—"Procedures Governing Termination of Financial Assistance and Denial of Refunding" is renamed "Procedures Governing Termination of Financial Assistance."

2. The authority citation for Part 1606 reads as follows:

Authority: Sec. 1006(b) (1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f(d), 2996g(e), 2996j).

§ 1606.1 [Amended]

3. Section 1606.1 is amended by removing the phrase "or refunding denied."

§ 1606.2 [Amended]

4. Section 1606.2 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

5. Newly redesignated §1606.2(c) is further amended by removing the phrase "or that refunding should be granted or denied."

§ 1606.3 [Removed]

§§ 1606.4–1606.20 [Redesignated as §§ 1606.3–1606.19]

6. Section 1606.3 is removed in its entirety and §§ 1606.4 through 1606.20 are redesignated §§ 1606.3 through 1606.19.

7. The references to the following sections are redesignated as indicated wherever they appear in Part 1606.

Old section	New section
1606.5	1606.4.
1606.5(b)	1606.4(b).
1606.6	1606.5.
1606.7	1606.6.
1606.8	1606.7.
1606.9	1606.8.
1606.9(c)	1606.8(c).
1606.10	1606.9.
1606.13(b)	1606.12(b).
1606.15	1606.14.
1606.18	1606.17.
1606.19	1606.18.

8. Newly redesignated § 1606.3 is revised to read as follows:

§ 1606.3 Grounds for termination.

A grant or contract may be terminated when:

(a) Termination is required by, or will implement a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class or a funding policy, standard, or criterion approved by the Board, except that termination shall not be based on a Corporation rule, regulation, guideline, or instruction that was not in effect when the current grant was made or when the current contract was entered into; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from contract with the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There has been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally acepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

§ 1606.4 [Amended]

9. Newly redesignated § 1606.4(a) is amended by removing the phrase "or that refunding should be denied."

§ 1606.10 [Amended]

10. Newly redesignated § 1606.10(a) is amended by removing the words "or denial of refunding."

11. Newly redesignated § 1606.10(b) is amended by removing the words "or denying refunding."

§ 1606.12 [Amended]

12. Newly redesignated § 1606.12(a)(1) is amended by removing the words "or granting refunding."

13. Newly redesignated § 1606.12(a)(2) is amended by removing the words "or denying refunding."

§ 1606.16 [Amended]

14. Newly redesignated § 1606.16 is amended by removing the words "or refunding is granted."

§ 1606.17 [Amended]

15. Newly redesignated § 1606.17 is amended by removing the phrase "or to refunding" in the first sentence.

§ 1606.18 [Amended]

16. Newly redesignated § 1606.18 is amended by removing the phrase "or to deny refunding."

For the reasons set out above, a new 45 CFR Part 1625 is added as follows:

PART 1625—DENIAL OF REFUNDING

Sec.

1625.1 Purpose.
1625.2 Definitions.
1625.3 Grounds for denial of refunding.
1625.4 Preliminary determination.
1625.5 Initiation of proceedings.
1625.6 Presiding officer.
1625.7 Pre-hearing procedures.
1625.8 Conduct of the hearing.
1625.9 Burden of proof.
1625.10 Recommended decision.
1625.11 Final decision.
1625.12 Extension of time and waiver.
1625.13 Right to counsel.
1625.14 Reimbursement.
1625.15 Interim funding.
1625.16 Termination funding.
1625.17 Notice.

Authority: Sec. 1006(b) (1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f(d), 2996g(e), 2996j).

§ 1625.1 Purpose.

This part is intended to provide a full, fair, impartial, timely and flexible process for reaching a final determination when there is reason to believe that refunding of a grant or contract should be denied. At the same time, this part seeks to avoid unnecessary and precipitous disruption in the delivery of legal assistance to eligible clients.

§ 1625.2 Definitions.

(a) "Denial of refunding" means a decision that after the expiration of a grant or contract a recipient:

(1) Will not be provided financial assistance; or

(2) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, or by the uniform application of a statistical formula for the reallocation

of funding among the members of the same class, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract.

§ 1625.3 Grounds for denial of refunding.

Refunding may be denied when:

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been significant failure by a recipient to comply with a provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation; or

(c) There has been significant failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective correction action; or

(d) The Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area.

§ 1625.4 Preliminary determination.

(a) When there is reason to believe that refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 10 days of receipt of the preliminary determination, make written request for a review of the preliminary determination in accordance with the procedures under this part.

(c) The preliminary determination shall also advise the recipient of its right to receive interim funding, and to request termination funding under §§ 1625.15 and 1625.16.

(d) If the recipient advises the Corporation it will not seek review, or if it fails to request review within the time prescribed in paragraph (b) of this section, the preliminary determination shall become final.

§ 1625.5 Initiation of proceedings.

Within 7 days after receipt of a request for continued review made under § 1625.4(b), the Corporation will send the recipient an acknowledgment, enclose a copy of these procedures, and notify the recipient of the name of the presiding officer appointed by the President, of the attorney representing the Corporation, of the proposed date, time and place of the hearing, and of the next steps in the review process.

§ 1625.6 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the presiding officer, the recipient may file a written notice that it objects to the presiding officer on the basis that this person does not fit the criteria of paragraph (a) of this section or has made statements or taken actions indicating personal bias made against the recipient.

(c) Within 10 days thereafter, the President shall consider the recipient's objection(s) with any supporting documentation and either retain or replace the presiding officer, and shall promptly notify the recipient of the decision.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified in this section.

§ 1625.7 Pre-hearing procedures.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) The possibility of presenting the case on written submission or oral argument;

(5) The advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing;

(7) Discussion of settlement; and

(8) Such other matters as may be appropriate.

(b) With or without a pre-hearing conference, the presiding officer may establish specific procedures consistent with this part for conduct of the hearing. The presiding officer may require or permit written submission of statements discussing any matter described in paragraph (a) of this section as well as any other arguments and supporting material at any time prior to the hearing.

(c) The presiding officer may, at any time prior to the completion of the hearing, require either party, upon sufficient notice, to produce a relevant document in its possession; the presiding officer may require either party to produce a person in its employ to testify at the hearing. In proceedings under § 1625.3(d), the presiding officer may likewise require the proposed new recipient of funding to produce a document in its possession or a person in its employ, subject to the sanctions set forth in § 1625.8(f).

§ 1625.8 Conduct of the hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date no less than 20 days after the date of the notice to the recipient required under § 1625.5.

(b) The hearing shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community shall be held in a single centrally located place unless the presiding officer determines that additional hearing places are required.

(c) The presiding officer shall preside over the hearing, avoid delay, maintain order, conduct a full and fair hearing, and insure that an adequate record of the facts and issues is made.

(d) The hearing shall be open to the public, unless, in the interests of justice or maintaining order, the presiding officer shall determine otherwise.

(e) Unless the parties agree as a result of the pre-hearing conference to present all or part of the case on written submission or oral argument, the Corporation and the recipient each may present its case by written or oral documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(f) If a party fails, without good cause, to produce a person or document required under § 1625.7(c), the presiding officer may make a finding adverse to the party, or any lesser determination may be made.

(g) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(h)(1) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(2) The validity of rules, regulations, guidelines and instructions duly published under Section 1008(e) of the Act shall not be challenged in a denial of refunding proceeding.

(i) The hearing will be recorded at Corporation expense. The Corporation will send one copy of the transcript to the recipient and the presiding officer as soon as it is received.

(j) At the discretion of the presiding officer, the parties may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. A party should note any relevant transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within a time limit set by the presiding officer and served upon the opposing counsel.)

(k) The transcript and any post-hearing briefs or letters will become part of the record.

§ 1625.9 Burden of proof.

The Corporation shall have the obligation of proving, by a preponderance of the evidence contained in the record, any disputed fact relied upon by the Corporation as justification for denial of refunding; with respect to all other issues, the recipient shall have the obligation to establish that the Corporation lacked a substantial basis for denying refunding.

§ 1625.10 Recommended decision.

(a) As soon as practicable after the hearing is completed and after submission of post-hearing briefs or proposed findings and conclusions, if any, and normally within 10 days after conclusion of the hearing or final submissions, the presiding officer shall issue a written recommended decision:

(1) Granting refunding; or

(2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or

(3) Denying refunding.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the recommended decision. Findings of fact shall be based solely in evidence disclosed at the hearing or adduced from the record or on matters of which official notice is taken.

§ 1625.11 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, and normally within 10 days, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon receipt by the recipients.

§ 1625.12 Extension of time and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extension of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 60 days of the preliminary determination.

(c) Any other provisions of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

§ 1625.13 Right to counsel.

At a hearing under § 1625.8, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The person designated to represent a party may be an employee, or may be outside counsel retained for the purpose.

§ 1625.14 Reimbursement.

If refunding is granted after a preliminary determination has been issued under § 1625.11, a recipient shall be entitled to receive reimbursement from the Corporation for reasonable and actual expenses including attorney's fees up to the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code, that were required in connection with proceedings under this part, to the extent it has prevailed and where the hearing officer finds the Corporation's position to have been substantially within merit.

§ 1625.15 Interim funding.

(a) Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding of its grant or contract.

(b) Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act.

§ 1625.16 Termination funding.

After a final determination to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

§ 1625.17 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient and to the chairperson of its governing body.

Dated: November 23, 1983.

Alan R. Swendiman,

General Counsel.

[FR Doc. 83-31936 Filed 11-29-83; 8:45 am]

BILLING CODE 6820-35-M

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45 CFR Part 1611

Eligibility

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Corporation's regulations governing determination of eligibility for legal services. This revision is needed to clarify the rule, strengthen enforcement procedures, and better focus resources on those in need of legal assistance. This rule sets more specific eligibility standards, provides for better documentation and verification of eligibility, and slightly narrows the categories of persons and organizations eligible.

EFFECTIVE DATE: December 30, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION:

General

The Corporation had considered this regulation extensively before the Operations and Regulations Committee meeting July 18, 1983. The regulation was postponed at that time and was considered at an August 23, 1983, committee meeting at which it was published for comment (August 29, 1983; 48 FR 39086).

The Corporation received extensive comments by the comment deadline of September 28, 1983. There was opposition to the proposed changes in this regulation, specifically to the section on assets. Section 1611.6 has been rewritten in response to the comments, as will be detailed under the discussion of that section below.

There were comments that no change in the eligibility regulation were needed or that the decision on these changes should be postponed. The regulation has been revised because the current language has given rise to repeated issues of interpretation, particularly as to allowable group representation and whether criteria other than income in the current § 1611.5 should operate to deny representation to persons within the income limits, as well as to allow representation of persons above those limits. Furthermore, most recipients had not established any objective guidelines as to the level of assets above which an applicant should not be served. Another problem was that when complaints as to eligibility have been received, the Corporation has had difficulty in obtaining the necessary information on which to make a determination. Finally, the limited amount of Corporation resources has prompted a reexamination of eligibility criteria so as to focus those resources on those persons in most need.

It has been suggested that a Board consisting of recess appointees should not take any action. The Board of Directors, however, has the same fiduciary responsibilities as any other corporate board and cannot abdicate them. Furthermore, the Board of Directors cannot postpone decisions on the basis of the prospect of a confirmed Board at some uncertain time in the future without paralyzing the Corporation for an indefinite period. The issues surrounding the eligibility regulation have been extensively considered and it is the conclusion of the Corporation that it is in the best interests of the Legal Services program to make a decision.

A substantial number of comments were received advocating changes in language which had not been changed from the current regulation; except in a few instances these comments are not discussed due to the issues raised concerning changes that were in fact made. The significant changes from the proposed regulation and significant issues raised by the comments on the proposed regulation are discussed below, section by section.

Section 1611.1 Purpose.

This section was unchanged and no comments were received on it.

Section 1611.2 Definitions.

This section was not significantly changed in the proposed rule. In the final rule, the definition of "Governmental income maintenance program" was deleted because this term is no longer used in the regulation.

Several comments were received advocating changes in the definitions. There was criticism of "gross income" as the standard for eligibility. The Corporation consistently has considered "gross income" to be the correct eligibility standard under the Act and believes that the factors listed in § 1611.5(b)(1) cover any inequities resulting therefrom. The Corporation has considered and rejected the suggestion of basing eligibility on weekly or monthly, rather than annual income. Such a standard would be subject to manipulation and abuse, and would result in excessively frequent changes in eligibility.

Section 1611.3 Maximum Income Level.

This section remains unchanged except for technical corrections. A few comments were received suggesting different income standards, but no change was considered, owing to the need for massive, lengthy, and expensive research to establish the necessary data base to enable the Corporation to consider a change in this basic eligibility criterion and the lack of convincing evidence that a change in the income eligibility level is needed.

Section 1611.4 Authorized Exceptions.

Three changes were made in this section. The first is that the proposed rule sets an absolute ceiling of 150 percent of the recipient's maximum income level, whereas the final rule sets a uniform national absolute ceiling at 150 percent of the "national eligibility level." The "national eligibility level" is 125 percent of the poverty line. Thus no one whose income is over 187.5 percent of poverty could be served. In response to comments, one exception to this absolute ceiling was added in § 1611.5(b)(1)(B) to address the situation where a person's income is primarily committed to medical or nursing home expenses.

The second change is that the proposed rule deleted the current § 1611.4(c), which is the "income disregard" section allowing benefits from a governmental income maintenance program not to be counted in income for the purposes of determining eligibility. The Corporation received numerous comments opposing this change on the grounds that it increases the number of eligibility determinations needed, since recipients of welfare, SSI, unemployment, etc., could no longer automatically be deemed eligible. The income disregard never made anyone automatically eligible. Moreover, ease of administration is not sufficient to justify serving one person with a higher income, some or all of which derives from a governmental income benefit program, while a person who is working and who makes less total income is not served. The Corporation has not seen a convincing answer in the comments to its contention that a governmental dollar is just as good as an earned dollar (and indeed sometimes better, because it is tax-free). In many states, unemployment compensation, alone, can total more than 125 percent of the Federal Poverty Income Guidelines. The change made does not affect the text of current § 1611.4(b) (in the final regulation § 1611.4(a)(2)), which allows for representation of persons "seeking legal assistance to secure benefits provided by a governmental program for the poor," e.g. SSI benefits, even if they are above the recipient's maximum income level.

The third change in Section 1611.4 was added in the final rule; it is that the former paragraphs (a) and (b) have become subparagraphs (1) and (2) of paragraph (a) and a new paragraph (b) is added. This new paragraph (b) requires recipients to document and include in the client's file the reasons for serving any client whose income exceeds 125 percent of poverty. It further requires the receipient to keep such other records (without client identification) "as will provide information to the Corporation as to the number of clients so served and the factual bases for the decision made." The purpose of this provision is to assure the existence of a record sufficient for the Corporation to review such eligibility determinations.

Section 1611.5 Determination of Eligibility—Paragraphs (a) and (b).

There was one minor change made in Section 1611.5(a). The next annual review of eligibility guidelines must be made by January 30, 1984, in order to include all the changes in eligibility criteria made in this regulation.

Section 1611.5(b) was extensively revised in the proposed rule, splitting the current § 1611.5(b) into two lists of criteria, those in Section (b)(1) which may be used to serve a client above the maximum income level and those in § 1611.5(b)(2) which shall be used not to serve a client at or below the maximum income level. In response to comments, the final rule uses the statutory language "shall be used in the determination of" for both Sections (b)(1) and (b)(2). Also, in response to comments, a new Section (b)(3) was added providing that if a client is to be served based on the factors in Section (b)(1), the factors in (b)(2) shall also be used before a final determination is made, and if a client is not to be served based on the factors in Section (b)(2), the factors in Section (b)(1) shall be used before a final determination is made. For example, if an over-income client were tentatively to be served based on medical expenses, assets would also have to be considered in the final determination; likewise, if a client were tentatively not to be served based on assets, medical expenses would also have to be considered in the final determination.

Section 1611.5(b)(2)(D) concerning assets was changed, in response to comments, to comport with the terminology of revised § 1611.6 and to include the explicit requirement that only assets "available to the applicant" be counted. The extensive changes in the treatment of assets will be discussed under § 1611.6.

One other change made in the proposed regulation, the change from "taxes" to "unpaid taxes" in § 1611.5(b)(1)(C), was criticized by numerous commentators. Nevertheless, it is retained because the general scheme of the regulation is to consider gross income and then use special circumstances as a basis for exceeding the gross income limits. Taxes, in general, are not a special circumstance, and thus are distinguishable from such factors as medical expenses or expenses associated with age or infirmity. Unpaid taxes, however, are a special circumstance and an indicator of financial distress. Consequently, the final regulation retains this language.

Section 1611.5 Determination of Eligibility—Paragraph (c).

Section 1611.5(c) was amended in the proposed regulation to restrict group eligibility to groups composed primarily of eligible clients and to require each group to provide information that it lacks funds to retain private counsel. These changes are retained in the final regulation. The current regulation allows a group composed primarily of eligible clients to be served regardless of its collective means and also allows service to a group that "has as its primary purpose furtherance of the interests of" eligible clients, if it lacks means to retain private counsel.

This section was criticized for making advocacy groups not composed primarily of eligible clients ineligible for services. It is the purpose of this section to ensure that scarce legal services resources are reserved for representation of eligible individual clients and organizations composed of and controlled by eligible individuals, consequently excluding advocate groups not primarily composed of eligible individual clients. It was also criticized because it would make impossible the representation of such individual clients as those in nursing homes, mental institutions, etc., with the assistance of advocacy groups. The Corporation believes this contention is erroneous. There is nothing in this paragraph preventing an advocacy group from assisting an eligible client in a nursing home or mental hospital in obtaining representation from a recipient. This paragraph merely requires that there be an *eligible client*—that each case taken have an actual client whose actual interests are being vindicated by legal representation, and whose case fits the priorities as determined by the recipient under 45 CFR Part 1620. It is a requirement that concrete benefit to an individual eligible client must be sought and, as such, should not be an obstacle to any group genuinely operating in the "furtherance of the interests of" eligible clients.

As stated in the preamble to the proposed regulation, it is assumed that a group composed primarily of eligible clients will be governed by those eligible clients. As a result, there is an inherently close relationship between the group's interests and the actual interests of its individual eligible clients. There is no such inherent relationship in the case of a group formed in furtherance of their interests. The fundamental premise of the Legal Services program is to provide legal representation by which eligible clients can assert *their own* interests, not to assist groups which pursue their ideas as to what the interests of eligible clients are or ought to be. There can be and are differences of opinion on the subject of what these interests are. There is, however, an objective standard as to who is an eligible client. This regulation insures that recipients determine eligibility according to this objective standard and not the subjective and arguable standard or what is in furtherance of the interests of eligible clients.

Section 1611.6 Asset Ceilings.

This section was a new section in the proposed regulation entitled "Maximum Allowable Assets." It has been retitled and completely redrafted in response to public comment. The biggest objections were to the numerical asset ceilings, especially $15,000 equity in a house, and the grant of authority to set specific asset guidelines to the Corporation rather than the recipient. The final regulation meets these objections by transferring the responsibility for setting guidelines, including specific asset ceilings, to the recipient programs, under general guidance from the Corporation.

Section 1611.6(a) requires that recipients set guidelines "incorporating specific and reasonable asset ceilings" and transmit these guidelines to the Corporation by January 30, 1984, and annually thereafter. These guidelines are required to include both liquid and non-liquid assets and to consider local economic and cost-of-living factors.

Section 1611.6(b) requires the recipient's guidelines to be consistent with the recipient's priorities under 45 CFR 1620 and to give special consideration to the elderly, institutionalized and handicapped. This provision meets the criticism that some members of these groups may have greater assets than the general public and yet be more in need, owing to their particular circumstances.

Section 1611.6(c) requires that all liquid and non-liquid assets of all persons who are resident members of a family unit be considered. In response to public comment, it provides that a recipient may exclude the principal residence of a client. It also provides for the consideration of impediments to a person's access to assets, as in the case of a battered wife or separated spouse.

Section 1611.6(d) retains, without any numerical ceiling, the provision in the proposed rule that reasonable equity in work-related equipment needed for the employment of a family member is not to be used to disqualify an applicant, provided its owner is producing or attempting to produce income with it.

Section 1611.6(e) allows for waiver by the project director of the recipient's asset guidelines in "unusual or extremely meritorious situations," requires that each waiver be documented in the client's file, and requires that the recipient keep separate records (without individual identification) of the numbers and reasons for such waivers. It is not expected that the granting of such waivers will be a frequent occurrence.

Criticism was made of counting assets for the entire resident family unit, rather than only the assets of the client. This method of counting assets is consistent with the method of counting gross income used under this regulation and, consequently, it has not been changed. Recipients may well decide to use a scale of asset ceilings adjusted for family size, as are the income guidelines. To neglect the assets of a member of a family unit would leave a potential for real abuse, as one member of a family unit can own extensive assets while another owns few or none. There is sufficient flexibility in the revised asset section to cope with any problems that may arise, while maintaining the principle of considering all the resources of the family unit.

Finally, there was criticism of the inclusion of non-liquid assets. Again, it is clear that non-liquid assets can contribute to the ability to afford legal assistance. With the flexibility of this revised section, recipients have ample room to devise guidelines which take into account the difficulty of liquidating non-liquid assets.

An issue was raised as to the Corporation's interpretation of Section 1007(a)(2) of the Legal Services Corporation Act. Subsection 1007(a)(2)(B) list four factors, the first of which is "(i) the liquid assets and income level of the client." From this, some comments deduce a lack of authority to require recipients to consider non-liquid assets. However, the list goes on to include "(iv) such other factors as relate to financial inability to afford legal assistance * * *"; non-liquid assets definitely so relate, and thus the Corporation has authority to require their consideration by recipients in setting their eligibility standards.

Section 1611.7 Manner of Determining Eligibility.

Section 1611.7 (a) and (b) reflect no changes. All of current § 1611.7(c) is retained, but the proposed rule added, and the final rule retains, an exception allowing disclosure to the Corporation of client financial eligibility information under certain narrow conditions. These conditions are:

(1) That the Corporation is investigating allegations questioning the eligibility of a *previously identified* client;

(2) Only information relating to the financial eligibility of that client is sought;

(3) The information is needed to confirm or deny specific allegations concerning that client's eligibility; and

(4) The information sought is not protected by attorney-client privilege.

The Corporation is required not to disclose the information to anyone except Corporation employees, and the recipient is required to notify the client prior to release of the information to the Corporation.

Comment was received contending that the regulation would require a violation of attorneys' and recipients' professional responsibilities.

The Corporation has in the past obtained such financial information under carefully restricted circumstances when needed to determine the validity of an allegation regarding the eligibility of a particular client. This section is intended to clarify existing Corporation policy without which it would not be possible for the Corporation to make determinations as to the eligibility of a client as required by Section 1006(b)(1)(B) of the Act. The limited information required to be made available to the Corporation is essential to this process of reviewing eligibility determinations. In the past, some recipients have provided such information while others have refused to do so. This section is needed to set a uniform and enforceable policy.

The Corporation has reviewed the regulation for possible infringement of the attorney-client relationship, and safeguards have been written into the regulation. First, there is a clear and explicit statement in subparagraph (c)(4) that if the information is protected by attorney-client privilege, it is exempt from disclosure to the Corporation. Second, the Corporation may not reveal it to any other person and may use it only in an eligibility determination review. Third, this review cannot be a random review, but only one in response to a specific allegation naming the client in question.

On the basis of these restrictions, the Corporation had concluded that this section will not require any attorney or recipient to violate professional responsibilities. This information would only be revealed to the Corporation in cases of an allegation of financial ineligibility and where the client has been identified. Consequently, it falls within the scope of Rule 1.6 of the newly adopted Code of Professional Responsibility which allows an attorney to reveal such information to the extent the lawyer believes it necesary to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning a lawyer's representation of the client. In the explanation accompanying Rule 1.6, it is noted that the lawyer has a right to respond when the allegation is made. The lawyer is not required to wait for the commencement of a proceeding, so the information can be disclosed by responding directly to a third party who has made the allegation.

Section 1611.8 Retainer Agreement.

This section requiring a written retainer agreement is new in the proposed rule. The only change in the final rule is that a retainer agreement is not required prior to rendering services in an emergency situation if the emergency is such as to require action before it is possible to complete a retainer agreement, in which case the retainer agreement must be completed as soon as is practicable.

Some comments disapproved of the requirement of a retainer agreement because it would be burdensome when only brief advice or telephone contact is involved. These commentators appear to have overlooked § 1611.8(b) which provides that a retainer agreement is not required when only "brief advice and consultation" is required.

Some commentators opposed the general idea of requiring retainer agreements, although two specifically supported it. Many recipients already routinely use retainer agreements. The Corporation considers the universalization of this practice to be professionally desirable and in accordance with its mandate under Section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards and to assure that there is no misunderstanding as to what services are to be rendered. Retainer agreements protect the attorney and recipient in case of an unfounded malpractice claim, and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards.

Section 1611.9 Change in Circumstances.

The content of this section is completely unchanged; it has been renumbered from Section 1611.7 in the current regulation. Several comments disapproved of the section on the basis

that it requires a redetermination of eligibility each time a client visits the program. The section does not so require, but only requires that any known change in circumstances affecting eligibility be taken into account.

List of Subjects in 45 CFR Part 1611

Eligibility, Legal services.

For the reasons set out in the preamble, 45 CFR Part 1611 is amended by revising §§ 1611.1 through 1611.7 and the authority citation and by adding §§ 1611.8 and 1611.9 as follows:

PART 1611—ELIGIBILITY

Sec.

1611.1 Purpose.
1611.2 Definitions.
1611.3 Maximum income level.
1611.4 Authorized exceptions.
1611.5 Determination of eligibility.
1611.6 Asset ceilings.
1611.7 Manner of determining eligibility.
1611.8 Retainer agreement.
1611.9 Change in circumstances.
Appendix A—Legal Services Corporation Poverty Guidelines

Authority: Sections 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(1), 2996f(a)(1), 299f(a)(2)).

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental program for the poor" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by Section 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

(a) A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of the national eligibility level (125% of poverty) may be provided legal assistance under the Act if:

(1) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in Section 1611.5(b)(1); or

(2) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

(b) In the event that a recipient determines to serve a person whose gross income exceeds 125% of poverty, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual bases for the decisions made.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. By January 30, 1984, and annually thereafter, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which shall be used in the determination of the eligibility of clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses, and in exceptional instances, with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 150 percent of the national eligibility level;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be used in the determination of the eligibility of clients under the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

(C) The consequences for the individual if legal assistance is denied;

(D) The existence of assets, including both liquid and nonliquid, which are available to the applicant and are in excess of the asset ceiling set by the recipient pursuant to Section 1611.6;

(E) Other significant factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(3)(A) If a recipient tentatively determines to serve a client over the maximum income level on the basis of factors listed in § 1611.5(b)(1), the factors listed in § 1611.5(b)(2) shall also be used before reaching a final determination.

(B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in §1611.5(b)(2), the factors listed in § 1611.5(b)(1) must also be used before reaching a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Asset ceilings.

(a) By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish and transmit to the Corporation guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services. The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.

(b) The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

(c) Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

(d) Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

(e) The governing body may establish authority for the project director to waive the ceilings on minimum allowable assets in unusual or extremely meritorious situations. In the event that a waiver is granted, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual basis for the decisions made.

§ 1611.7 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without express written consent of the client, except that the recipient shall provide such information to the Corporation when:

(1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;

(2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;

(3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to that particular client's financial eligibility and the recipient's representation thereof; and

(4) The specific information sought by the Corporation is not protected by the attorney-client privilege.

The information provided to the Corporation by the recipient shall not be disclosed to any person who is not employed by the Corporation. Prior to providing the information to the Corporation, the recipient shall notify the client that the recipient is required to provide to the Corporation the information sought.

§ 1611.8 Retainer agreement.

(a) A recipient shall execute a written retainer agreement, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement shall be executed when representation commences (or, if not possible owing to an emergency situation, as soon thereafter as is practicable), and shall clearly identify the relationship between the client and the recipient, the matter in which representation is sought, the nature of the legal services to be provided, and the rights and responsibilities of the client. The recipient shall retain the executed retainer agreement as part of the client's file, and shall make the agreement available for review by the Corporation in a manner which protects the identity of the client.

(b) A recipient is not required to execute a written retainer agreement when the only service to be provided is brief advice and consultation.

§ 1611.9 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

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Dated: November 23, 1983.

Alan R. Swendiman,

General Counsel.

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45 CFR Part 1627

Subgrants, Fees and Dues

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule establishes a new Part 1627 governing all transfers of Corporation funds by recipients to other

organizations. There are, at present, no Corporation regulations governing such transfers, and, consequently, there is inadequate control over and accountability for such transfers. This final rule requires prior Corporation approval for subgrants and limits the amount of Corporation funds which recipient programs can expand on fees and dues, exclusive of routine training.

EFFECTIVE DATE: This regulation is effective December 30, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Deputy General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION:

General

The title of this regulation has been changed from "Limitations on the Transfer of Corporation Funds by Recipients and on Certain Expenditures" to "Subgrants, Fees and Dues." This change is made for the sake of brevity; the regulation is still intended to govern all transfers of Corporation funds by a recipient to any other organization.

This regulation was proposed on June 22, 1983 (48 FR 28485). Thirty-two comments on this regulation were received by the deadline for receipt of comments. Most comments were critical of the regulation in whole or in part; one was favorable, and another contained only technical comments.

Several commentators raised a general argument that the Corporation lacks authority to issue this regulation. In response to this argument, the Authority section of the regulation has been amended to cite sections 1006(b)(1) and 1007(a)(3) of the Legal Services Corporation Act, as well as section 1008(e). Section 1007(a)(3) requires the Corporation to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." The applicability of this section to subgrants is obvious. As for fees and dues and other transfers of funds, what the Corporation is doing is insuring that its funds given to recipients under grants and contracts are expended for the purposes intended and are not dissipated by excessive payment of fees and dues to other organizations.

Furthermore, section 1006(b)(1)(A) of the Act confers on the Corporation "the authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations and guidelines promulgated pursuant to this title * * *." Uncontrolled transfers of Corporation funds by recipients to other organizations make it very difficult for the Corporation to insure such compliance regarding the expenditure of Corporation funds. The ability to hold the recipient responsible for improper expenditures by other organizations after the fact is not sufficient to insure such compliance. Recipients are selected with a view to their understanding of and compliance with the Act and Corporation regulations, and the Corporation needs a voice in the selection of other organizations which are to expend Corporation funds.

Some comments argue that the Corporation can only issue regulations when there is an explicit grant of authority to issue regulations in the section of the Act upon which the regulations are based. The Corporation regards section 1008(e) of the Act as a general grant of authority to issue regulations, and it has understood that it has such a general grant of authority and acted consistent with this understanding since its inception. Had Congress disagreed with this interpretation, it would have so indicated when the Corporation was reauthorized in 1977.

Some comments argue that there was insufficient statement of purpose in the proposed rule. The Corporation disagrees, as the purpose of the rule was clearly stated in the preamble to the proposed rule. In any event, the foregoing discussion again restates the purpose of this regulation.

As both the significant comments and the significant changes are in § 1627.2, 1627.3, and 1627.4, these three sections will be discussed individually and a very few other matters discussed at the end of this preamble.

Section 1627.2 Definitions.

In § 1627.2(b)(1) of the proposed rule, subgrant was defined at length, and in § 1627.2(b)(2) subgrantee (subrecipient in the final rule) was defined in terms of subgrant. In the final rule, this order is reversed and subgrant is defined in terms of subrecipient, in order to conform with the terminology of the Legal Services Corporation Audit and Accounting Guide and auditing procedure. The definition of subrecipient is elaborated in the final rule to clarify that it includes organizations receiving funds for state support, training, and client involvement activities. The exception for transfers of funds to private attorneys or law firms on a fee-for-service or judicare basis is retained, but is limited to transfers involving no more than $25,000; thus transfers to private attorneys or law firms in excess of $25,000 are considered subgrants. Aside from the exceptions in the definition, all transfers of funds on a grant or contract basis are intended to be included as transfers related to a recipient's program. Any such transfer not "related" to a recipient's program would be a disallowed cost anyway, since recipients are not permitted to expend Corporation funds for purposes not related to their program.

The definition of subgrant was criticized as being unclear in some instances. The Corporation expects that the new, more extensive definition of subrecipient will be clearer. The inclusion of state support was criticized, but this is, in the opinion of the Corporation, one of the areas most requiring direct Corporation approval. A few comments opposed the exception for private attorneys and firms, and a few comments mistakenly criticized the proposed rule for interfering with private attorney involvement. Because of the multiplicity of approvals that would be required if a typical judicare or fee-for-service program were covered, the Corporation decided to make this exception. The large number of approvals routinely required does differentiate such programs from other types of subgrants. The $25,000 limit was added on the same logic, as there can, obviously, be only a small number of such expenditures over $25,000 by a recipient.

Section 1627.3 Requirements for All Subgrants.

With the exception of rewriting § 1627.3(c) without substantive change so it references the Legal Services Corporation Audit and Accounting Guide and conforms to accounting terminology, the language of this section has been retained; however, there have been three additions.

The first is to § 1627.3(b)(1) to which an explicit statement has been added that funds not expended at the end of the grant period are considered part of the recipient's fund balance. The Corporation considered this to be implicit in existing practice, but an explicit statement was added to avoid confusion.

Secondly, a new subparagraph has been added to § 1627.3(a) allowing recipients to extend any subgrant which is a continuation of a previous subgrant until March 1, 1984, if a request for approval of a new subgrant is submitted to the Corporation by January 15, 1984. This is a transitional provision added because the adoption of this rule has been delayed longer than originally anticipated and recipients, consequently, may not have time to seek approval of their 1984 subgrants before

the new year begins. A further transitional provision provides that if any such agreement is submitted and rejected, the recipient shall be permitted to allow the subrecipient another 60 days of closeout funding.

Thirdly, a new § 1627.3(e) has been added requiring that all subgrant agreements shall provide that the Corporation has the same oversight rights over the subrecipient that it has over the recipient. The purpose of this addition is to resolve the issue of what oversight rights the Corporation has over subrecipients, and to assure that the Corporation has the power to ensure the expenditure of funds in conformity with law and applicable regulations, guidelines, and instructions.

Several comments opposed the requirement of prior approval of subgrants as excessive interference with recipients' conduct of their programs. The Corporation considers such prior approval a necessity if the Corporation is to carry out its statutory responsibilities. Most Federal grant-making agencies have requirements for the approval of subgrants. The largest such agency, the Department of Health and Human Services, requires such approval (see 45 CFR 74.103(d)). Indeed, the Corporation has experienced numerous problems in tracking and controlling the use of subgranted funds and considers the adoption of this standard management provision to be long overdue.

There were several comments that the 45 day period for approval of subgrants is too long. That period is intended to be the outside time limit, and in fact the Corporation expects to process most subgrant requests well within it; upon notification by the recipient that the period has been exceeded, the subgrant is considered automatically approved after another 7 days. Most such time periods do not carry an automatic waiver provision. This time period was set with regard to being a realistic deadline which can be met, even in complicated cases. The Corporation has retained this time period rather than setting a shorter time period and being compelled to disapprove some subgrants in order to maintain its review rights.

The extension until March 1, 1984 and the 60 day closeout period for current subgrants were both adopted to mitigate the transitional problems for 1984. In the future, recipients will know that this approval requirement must be met and will have time to plan for submission of subgrant agreements sufficiently in advance to secure approval before the intended beginning of the subgrant.

Section 1627.4 Fees and Dues.

In response to comments, the Corporation has revised this section significantly, eliminating the requirement of Corporation approval of each payment of fees or dues. The Corporation has retained the first three of the four purposes listed in § 1627.4(a) for which fees or dues could be paid and has added a new, fourth, general category of fees and dues "directly related to the delivery of legal services to eligible clients, the practice of law or the management of a law office." Fees and dues falling into any of these four categories do not require Corporation approval.

The Corporation has retained the limit of one-half of one percent of a recipient's annualized funding (except for dues falling into categories 1627.4(a)(1) and (3)). However, in response to comments, the minimum amount of fees and dues allowed to all recipients has been increased from $750 to $1500; an absolute ceiling of $20,000 has also been added.

With one minor exception, discussed under other issues below, the other changes in this section are merely changes in terminology to conform the rest of this section to the changes discussed above.

Several comments opposed any regulation of fees and dues. A few claimed that such regulation violates the First Amendment rights of recipients. That claim was implausible, in any event; however, the change in the regulatory scheme to limit only the total amount of such fees and dues without requiring any individual approval by the Corporation obviates any possibility of a First Amendment issue.

Other comments claimed that the amount of Corporation funds used by a recipient for fees and dues should be solely a matter for the recipient to decide. The Corporation does not accept the argument that it must defer entirely to the judgment of the recipient as to how these funds supplied by the Corporation should be spent in achieving the goals of the recipient's grant or contract. The Corporation believes that a limit on the expenditure of Corporation funds by recipients for fees and dues conserves these funds for direct use in the provision of legal services to eligible clients (or, in the case of recipients not directly providing legal services, for the purpose of their grants).

Other Issues

With the exception of technical changes, there are only two other changes in this final rule. The first is in section 1627.5 where the words "or gifts" are added after "contributions" to make it clear that any transfer of Corporation funds by recipients that is not a subgrant or for fees or dues, and is not otherwise provided for in this rule, is prohibited.

The second is that in §§ 1627.4(d) and 1627.7(b)(1) the words "other applicable Federal law" are added to the list of statutory and regulatory restrictions which may not be circumvented by payment to other organizations for fees and dues or for educational and training activities.

Several comments opposed the restrictions on payment of fees and dues to organizations and payments for training activities in the areas of political activities, voter registration, and, in particular, lobbying. The issue concerning lobbying is that some limited lobbying is permitted to recipients, so commentators contend that training in that area and payment of fees and dues to organizations that lobby should be permitted.

As for training, funds used for training should be used in areas of normal programmatic activities. Lobbying should not be such an area under the stringent restrictions presently in force. Furthermore, as documented in the September 19, 1983 GAO report on violation of restrictions on lobbying and related activities in 1980–81, training relating to lobbying has been a significant area of abuse. Consequently, the Corporation retains the ban on such training in § 1627.7.

As for payment of fees and dues, the operative language is "payment of fees and dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines, or Instructions." If an organization lobbies only within the very narrow restrictions currently applicable to lobbying by a recipient, it could receive fees or dues form recipients. If its lobbying activities are of a wider scope, then it could not. This prohibition is designed to prevent the circumvention of restrictions on lobbying by indirect financing of lobbying with Corporation funds through fees or dues. As such, it is a legitimate provision to enforce these Congressionally mandated restrictions.

List of Subjects in 45 CFR Part 1627

Legal services, Grant programs.

For the reasons set out in the preamble, 45 CFR Chapter XVI is amended by adding Part 1627 to read as follows:

PART 1627—SUBGRANTS, FEES AND DUES

Sec.

1627.1 Purpose.
1627.2 Definitions.
1627.3 Requirements for all subgrants.
1627.4 Fees and dues.
1627.5 Contributions.
1627.6 Transfers to other recipients.
1627.7 Training and education activities.
1627.8 Tax sheltered annuities, retirement accounts and pensions.

Authority: Sections 1006(b)(1), 1007(a)(3), and 1008(e) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e)).

§ 1627.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

§ 1627.2 Definitions.

(a) "Recipient" as used in this part means any recipient as defined in Section 1002(6) of the Act *and* any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) "Subrecipient" shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than $25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

(2) "Subgrant" shall mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.

(c) "Fees and dues" as used in this Part shall mean fees or dues paid to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein; it shall also include fees and dues required by a professional licensing body. The term "fees and dues" shall not include one-time fees or expenses for programs or individuals to participate in routine training and education activities.

§ 1627.3 Requirements for all subgrants.

(a)(1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are sugegsted may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of subsection (a)(2) shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(4) Any subgrant which is a continuation of a previous subgrant and which expires between January 1 and March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of Section 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated by a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. The delegated funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization receives a small subgrant. If such an alternate means is approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.

(e) To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 CFR Chapter XVI), and Corporation Guidelines or Instructions, contracts between a recipient and a subrecipient shall provide for the same oversight rights for the Corporation with respect to subrecipients as apply to recipients.

§ 1627.4 Fees and dues.

(a) Corporation funds may be used for fees or dues to an organization, whether

on behalf of a recipient or an individual, without prior written approval by the Corporation, only for the following purposes:

(1) Fees or dues paid to an organization in order to qualify for professional liability insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment;

(2) Mandatory or voluntary fees or dues to a bar association, Supreme Court or professional licensing body;

(3) Fees or dues paid to a health insurance provider or to an organization in order to qualify for health insurance at reduced rates, provided the reduction in rates is reasonably comparable to the amount of the payment; and

(4) Fees or dues to other organizations provided such are directly related to the delivery of legal services to eligible clients, the practice of law, or the management of a law office.

(b) In order to prevent a significant diversion of funds from the direct provision of legal services to eligible clients, the Corporation has determined that the total of any one recipient's annual expenditure on fees and dues should be strictly limited. With the exception of categories (1) and (3) listed in § 1627.4(a), that total shall not exceed one-half of one per cent of the recipient's annualized funding level except that each recipient may expend up to $1,500 and no recipient may expend more than $20,000 on fees and dues.

(c) In determining whether to use funds for fees or dues, recipients shall give preference to such uses as (1) payment of bar association dues and similar dues for paralegal and legal service or law office administrator organizations; and (2) the provision of special training related to activities designed to enhance the skill of program staff in provision of legal services to clients. Training relating to skills the use of which is often not permissible if supported with Corporation funds (e.g. lobbying) shall not be approved.

(d) Corporation policy forbids payment of fees or dues if the effect of that payment would be to allow recipients to use Corporation funds indirectly in areas (such as lobbying, political activities, voter registration) for which direct expenditures by recipients are prohibited or severely restricted under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions. Consequently, recipients shall not make payment of fees or dues to organizations whose activities would violate the Act, or Corporation Regulations, Guidelines or Instructions.

§ 1627.5 Contributions.

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

§ 1627.6 Transfers to other recipients.

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subrecipient shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the recipient. The recipient shall either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient or subrecipient or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

§ 1627.7 Training and education activities.

(a) Corporation funds utilized to pay for participation of programs and individuals in routine training and educational activities do not count toward computation of the maximum allowable total of fees and dues under Sec. 1627.4(b).

(b) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or educational activities if the effect of such payment would be to allow the use of these program funds:

(1) For purposes for which direct expenditures are prohibited under the Act, other applicable Federal law, Corporation regulations (45 CFR Chapter XVI), or Corporation Guidelines or Instructions; or

(2) For training or educational activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying).

§ 1627.8 Tax Sheltered Annuities, Retirement Accounts and Pensions.

No provision contained in this Part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

Dated: November 23, 1983.

Alan R. Swendiman,

General Counsel.

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